Missouri Attorney General's Opinions - 1993

Opinion	Date	Topic	Summary
40-93	July 26	COUNTIES. COUNTY ZONING. LEVEE DISTRICTS. ZONING.	The provisions of Section 49.600.4, RSMo Supp.1992, and Section 64.001, RSMo Supp.1992, as enacted by House Bill No. 72, 86th General Assembly, First Regular Session (1991), apply to all levee districts organized pursuant to Chapter 245, RSMo, even those levee districts organized prior to March 4, 1991, the effective date of House Bill No. 72.
52-93	July 14		Letter to The Honorable S. Sue Shear.
59-93	May 14		Letter to The Honorable Steve Ehlmann.
68-93	May 5	DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION. SCHOOLS. SCHOOL RECORDS. SUNSHINE LAW.	Under the facts presented, average Missouri Mastery and Achievement Test (MMAT) scores for each individual grade of each elementary school building within a school district are public records which are open to the public for inspection and copying.
73-93	Feb 10	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition relating to the amendment of the Missouri Constitution by adding a new article concerning discrimination.
74-93	Apr 9		Letter to The Honorable Nancy Farmer.
80-93	Apr 27	CONCEALED WEAPONS. COUNTY RECORDS. FIREARMS. RECORDS. SHERIFFS. SUNSHINE LAW. WEAPONS.	Records relating to permits to acquire a concealable firearm retained by a county sheriff as required by Section 571.090.5, RSMo Supp. 1992, are public records open to inspection pursuant to Section 109.180, RSMo 1986, and Section 610.023, RSMo Supp. 1992.
85-93	Mar 2	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1986, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of the Missouri Constitution by adding a new article concerning discrimination.
110-93	Sept 30	CONSTITUTION. POLITICAL SUBDIVISIONS.	Article VI, Section 23 of the Missouri Constitution does not prohibit a port authority organized under Chapter 68, RSMo, from owning all of the stock of a corporation which operates a railroad consistent with

		PORT AUTHORITY.	the statutory powers of a port authority.
112-93	Aug 24	SCHOLARSHIPS. SCHOOLS. STUDENT FINANCIAL ASSISTANCE PROGRAM. STUDENTS.	Students who are home-schooled under Section 167.031, RSMo Supp. 1992, and students who receive a certificate of high school equivalency under Sections 161.093 and 161.094, RSMo 1986, are not precluded from receiving a scholarship under the Higher Education Academic Scholarship Program authorized by Section 173.250, RSMo Supp. 1992.
114-93	May 18	RULES AND REGULATIONS. ST. LOUIS BOARD OF POLICE COMMISSIONERS. TERM OF OFFICE.	The St. Louis Board of Police Commissioners has no authority to provide by rule for the president and vice president of the board to have two year terms of office.
122-93	Aug 27	CITY JUDGES. JUDGES. QUALIFICATIONS FOR OFFICE. QUALIFICATIONS.	Section 479.020.7, RSMo, as amended by Conference Committee Substitute for House Substitute No. 2 for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 88, 87th General Assembly, First Regular Session (1993) prohibits a municipal judge in a fourth class city who has reached his seventieth (70th) birthday from continuing to serve after the effective date of such bill, August 28, 1993.
127-93	July 7	INITIATIVES.	Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition relating to the amendment of the Missouri Constitution by adding a new article prohibiting special privilege laws based on sexual orientation.
128-93	Dec 14	NATURAL RESOURCES, DEPARTMENT OF. SOLID WASTES.	A city or county authorized by subsection 2 of Section 260.215, RSMo Supp. 1992, to adopt ordinances or orders, rules, regulations, or standards for the storage, collection, transportation, processing or disposal of solid wastes is authorized to adopt ordinances or orders that require the recycling of certain solid wastes.
129-93	July 12	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition relating to the amendment of Chapter 130, RSMo, and specifically the enactment of five new sections to be known as Sections 130.100, 130.110, 130.120, 130.130 and 130.135.
136-93	Nov 10		Letter to Robert D. Schollmeyer.
137-93	July 26	BALLOTS. REFERENDUM.	Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of a referendum petition relating to Senate Bill No. 380, 87th General Assembly, First Regular Session.
140-93	Sept 9	CONFLICT OF	1) Pursuant to Section 105.454(5), RSMo Supp. 1992, an elected or

		INTEREST. MISSOURI ETHICS COMMISSION.	appointed official or employee of the state serving in an executive or administrative capacity may not perform any service for consideration, during one year after termination of his office or employment, by which performance he attempts to influence a decision of any agency of the state, except as provided in such section, and 2) not all meetings of boards and commissions in which a record of the proceedings may be kept and maintained as a public record is an “adversary proceeding” as defined in Section 105.450(1), RSMo Supp. 1992.
142-93	July 26	INITIATIVES.	Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition relating to the amendment of Article X of the Missouri Constitution and specifically Sections 1, 4(a), 4(b), 4(c), 4(d), 4(e), 5, 6, 6(b) and 10(a).
143-93	July 30	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1986, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Chapter 130, RSMo, and specifically the enactment of five new sections to be known as Sections 130.100, 130.110, 130.120, 130.130 and 130.135.
147-93	Aug 4	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition relating to the amendment of Chapter 130, RSMo, and specifically the enactment of five new sections to be known as Sections 130.100, 130.110, 130.120, 130.130 and 130.135.
148-93	Aug 4	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1986, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Chapter 130, RSMo, and specifically the enactment of five new sections to be known as Sections 130.100, 130.110, 130.120, 130.130 and 130.135.
150-93	Oct 5	MERIT SYSTEM. MISSOURI ETHICS COMMISSION.	Employees of the Missouri Ethics Commission are not included among the employees designated in Section 36.030, RSMo Supp. 1992, as being subject to the merit system.
151-93	Oct 8	CITIES, TOWNS AND VILLAGES. FOURTH CLASS CITIES. IMPEACHMENT.	The phrase "all the members elected to the board of aldermen" in Section 79.240, RSMo 1986, refers to the full authorized membership of the board so, if the board of aldermen consists of four members, the mayor may remove an alderman pursuant to such section only with the consent of three aldermen.
153-93	Aug 18	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1986, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Chapter 130, RSMo, and specifically the enactment of five new sections to be known as Sections 130.100, 130.110, 130.120, 130.130 and 130.135.

155-93	Aug 20	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition relating to the amendment of various sections in Article X of the Missouri Constitution.
158-93	Oct 27		Letter to the Missouri Ethics Commission.
159-93	Aug 20	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition relating to the amendment of the Missouri Constitution by adding a new article prohibiting special privilege laws based on sexual orientation.
162-93	Sept 3	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1986, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of the Missouri Constitution by adding a new article prohibiting special privilege laws based on sexual orientation.
163-93	Sept 3	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1986, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of various sections in Article X of the Missouri Constitution.
179-93	Nov 5	INITIATIVES.	Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition entitled Philadelphia II.
184-93	Nov 12	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition relating to the amendment of Article X of the Missouri Constitution.
192-93	Dec 14	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1986, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Article X of the Missouri Constitution.
194-93	Dec 27	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition relating to the amendment of Article X of the Missouri Constitution.
201-93	Dec 29	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition entitled Philadelphia II.

COUNTIES:
COUNTY ZONING:
LEVEE DISTRICTS:
ZONING:

The provisions of Section 49.600.4, RSMo Supp. 1992, and Section 64.001, RSMo Supp. 1992, as enacted by House Bill No. 72, 86th General Assembly, First Regular Session (1991), apply to all levee districts organized pursuant to Chapter 245, RSMo, even those levee districts organized prior to March 4, 1991, the effective date of House Bill No. 72.

July 26, 1993

OPINION NO. 40-93

The Honorable Steve Ehlmann
Senator, District 23
State Capitol Building, Room 421
Jefferson City, Missouri 65101

Dear Senator Ehlmann:

This opinion is in response to your question asking:

> Does Section 245.280 grandfather in any levee district existing prior to March 4, 1991 with regard to the change in the law which became effective on that date contained in Section 49.600(4) which states: "Levee districts organized pursuant to chapter 245, RSMo, and drainage districts organized pursuant to chapters 242 and 243, RSMo, are subject to flood plain management regulations adopted by a county pursuant to this chapter"?

Along with your question, you state:

> . . . [Section] 245.280 preserves "[a]ll rights, powers, liens and remedies now existing in behalf of such levee district of [this] state". This would seem to indicate that, without amending or deleting Section 245.280, the Legislature cannot pass 49.600(4) which severely limits or denies the power of levee districts to build levees and that 49.600 would apply only to new levee districts created after March the 4th, 1991.

> The Consolidated North County Levee District was in existence and organized under Chapter 245 of the Mo. Statutes prior to March 3rd, 1991.

Section 245.280, RSMo 1986, provides:

> 245.280. Sections construed--existing rights not to be affected.--The repealing of existing laws shall not have the effect of suspending, abating, abridging, impairing, vitiating or nullifying any right, power, remedy or lien heretofore given, created or conferred upon any levee district heretofore organized or in process of organization at the time of passage of sections 245.010 to 245.280, under any law of this state, either special or general, but all such rights, powers, remedies and liens are hereby directly preserved to all such levee districts; . . . Sections 245.010 to 245.280 are hereby declared to be remedial in character and purpose, and shall be liberally construed by the courts in carrying out this legislative intent and purpose, and its provisions shall be construed to apply to levee districts already organized or in process of organization at the time of the passage of sections 245.010 to 245.280.

Section 245.280 was originally enacted as Section 53 of Committee Substitute for House Bill No. 690, Forty-seventh General Assembly (1913). That act provided that the powers of levee districts shall be preserved as they existed at the time of the passage of the 1913 law. Such section as originally enacted provided:

> Sec. 53. Act, how construed--existing rights not be affected by this act.--The repealing of article 9 (entitled "Organization of levee districts by circuit courts") of chapter 41 (entitled "Drains and levees") of the Revised Statutes of Missouri of 1909 and the repealing of an act amending and adding to said article 9, enacted in 1911 and found on pages 231 to 239 of the Laws of Missouri of 1911, shall

> not have the effect of suspending, abating, abridging, impairing, vitiating or nullifying any right, power, remedy or lien heretofore given, created or conferred upon any levee district heretofore organized or in process of organization at the time of passage of this act, under any law of this state either special or general, but all such rights, powers, remedies and liens are hereby directly preserved to all such levee districts; . . . This act is hereby declared to be remedial in character and purpose, and shall be liberally construed by the courts in carrying out this legislative intent and purpose, and its provisions shall be construed to apply to levee districts already organized or in process of organization at the time of the passage of this act. [Emphasis added.]

Laws of Missouri, 1913, pages 320-321. A review of the history of Section 245.280 indicates no legislative action with respect to such section since its original enactment in 1913. The changes between such section as originally enacted in 1913 and such section as set forth in the 1986 statutes occurred primarily between 1913 and 1919 and were apparently made by the revisor of statutes. Such section was numbered Section 4650 in the Revised Statutes of Missouri, 1919, and is substantially the same as Section 245.280, RSMo 1986, except the section number references were changed subsequent to 1919 also apparently by the revisor of statutes.

The language of Section 53 of Committee Substitute for House Bill No. 690 expressed the legislative intent to permit and require districts organized under laws prior to 1913 to be governed by the act of 1913, at the same time preserving to such districts all their rights, powers, liens, and remedies given and bestowed upon them by the laws under which they were organized. State ex rel. Harrison v. Hill, 249 S.W. 693, 695 (Mo. App. 1923). "Absent a legislative act amending the section, statute revisers have no authority to change the substantive meaning and application of a law or its purpose and intent, and any subsequent revision purporting to effect such a substantive change is ineffective for that purpose. In such case, the law as originally enacted must be construed and applied to accomplish the original legislative intent and purpose." Protection Mutual Insurance Company v. Kansas City, 504 S.W.2d 127, 130 (Mo. 1974). The statutory references in Section 245.280 RSMo 1986 made by the revisor of statutes,

therefore, cannot change the legislative intent of the 1913 act which was to preserve the rights of levee districts only as they existed in 1913.

House Bill No. 72, 86th General Assembly, First Regular Session (1991) enacted Section 49.600.4 and Section 64.001. These statutes provide:

> 49.600. National flood insurance program, adoption and rescission procedure--exemptions (certain second, third, fourth class counties).--
>
> * * *
>
> 4. Levee districts organized pursuant to chapter 245, RSMo, and drainage districts organized pursuant to chapters 242 and 243, RSMo, are subject to flood plain management regulations adopted by a county pursuant to this chapter.
>
> * * *
>
> 64.001. Drainage and levee districts subject to flood plain management, when.--Any levee district organized pursuant to chapter 245, RSMo, and any drainage district organized pursuant to chapters 242 and 243, RSMo, are subject to any flood plain management regulations adopted by any county pursuant to this chapter.

Through the enactment in 1991 of House Bill No. 72, the legislature has expressed its intent that levee districts organized pursuant to Chapter 245, RSMo, are to be subject to flood plain management regulations adopted by a county pursuant to Chapters 49 and 64, RSMo. The general legal doctrine supported by a unbroken line of authorities is that political powers conferred upon municipal corporations for local government are not vested rights as against the state, and the legislature has the absolute power to change, modify or destroy them at its pleasure. McQuillin Mun Corp § 4.05 (3rd Ed). The legislative intent of Section 245.280, as discussed above, is not in conflict with the provisions of Section 49.600.4 and Section 64.001.

CONCLUSION

It is the opinion of this office that the provisions of Section 49.600.4, RSMo Supp. 1992, and Section 64.001, RSMo Supp. 1992, as enacted by House Bill No. 72, 86th General Assembly, First Regular Session (1991), apply to all levee districts organized pursuant to Chapter 245, RSMo, even those levee districts organized prior to March 4, 1991, the effective date of House Bill No. 72.

Very truly yours,

JEREMIAH W. (JAY) NIXON
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July 14, 1993

OPINION LETTER NO. 52-93

The Honorable S. Sue Shear
Representative, District 83
State Capitol Building, Room 302B
Jefferson City, Missouri 65101

Dear Representative Shear:

This opinion letter is in response to your question asking:

> Whether the term "improvement" as used in the Neighborhood Improvement District Act (§§ 67.453-75, RSMo, 1991 Supp.) includes work on private streets in residential subdivisions located within a designated neighborhood improvement district.

Along with your question, you state:

> Certain communities wish to use the special assessments and general obligation bonds provided for by the Neighborhood Improvement District Act to finance improvements to residential subdivision streets. Although accessible to members of the public, these streets have not been accepted as public streets and are not dedicated to public use. I would like to know whether a city may finance work on private subdivision streets pursuant to the Neighborhood Improvement District Act.

Section 67.455, RSMo Supp. 1992, authorizes the governing body of a city or county to make improvements within a neighborhood improvement district pursuant to Sections 67.453 to 67.475, RSMo Supp. 1992. Section 67.455 provides:

> 67.455. Neighborhood improvements--bonds, special assessments.--As a complete

> alternative to all other methods provided by law or charter, the governing body of any city or county may make, or cause to be made, improvements which confer a benefit upon property within a neighborhood improvement district pursuant to sections 67.453 to 67.475. The governing body of such city or county may incur indebtedness and issue temporary notes and general obligation bonds of such city or county pursuant to sections 67.453 to 67.475 to pay for all or part of the cost of such improvements. An improvement may be combined with one or more other improvements for the purpose of issuing a single series of general obligation bonds to pay all or part of the cost of such improvements, but separate funds or accounts shall be established within the records of the city or county for each improvement. . . . Such city or county shall assess special assessments on the property deemed by the governing body to be benefited by each such improvement pursuant to section 67.457. The city or county shall use the moneys collected from such special assessments to reimburse the city or county for all amounts paid or to be paid by it as principal of and interest on its general obligation bonds issued for such improvements.

Section 67.453 provides the following definitions:

> 67.453. Neighborhood improvement districts--definitions.--Sections 67.453 to 67.475 are known and may be cited as the "Neighborhood Improvement District Act", and the following words and terms, as used in sections 67.453 to 67.475 mean:
>
> * * *
>
> (4) "Improve", to construct, reconstruct, maintain, restore, replace, renew, repair, install, equip, extend, or to otherwise perform any work which will provide <u>a new public facility</u> or enhance, extend or restore the value or utility of <u>an existing public facility</u>;

(5) "Improvement", any one or more public facilities or improvements which confer a benefit on property within a definable area and may include or consist of a reimprovement of a prior improvement. Improvements include, but are not limited to, the following activities:

(a) To acquire property or interests in property when necessary or desirable for any purpose authorized by sections 67.453 to 67.475;

(b) To open, widen, extend and otherwise to improve streets, paving and other surfacing, gutters, curbs, sidewalks, crosswalks, driveway entrances and structures, drainage works incidental thereto, and service connections from sewer, water, gas and other utility mains, conduits or pipes;

(c) To improve main and lateral storm water drains and sanitary sewer systems, and appurtenances thereto;

(d) To improve street lights and street lighting systems;

(e) To improve waterworks systems;

(f) To improve parks, playgrounds and recreational facilities;

(g) To improve any street or other facility by landscaping, planting of trees, shrubs, and other plants;

(h) To improve dikes, levees and other flood control works, gates, lift stations, bridges and streets appurtenant thereto;

(i) To improve vehicle and pedestrian bridges, overpasses and tunnels;

(j) To improve retaining walls and area walls on public ways or land abutting thereon;

> (k) To improve property for off-street parking facilities including construction and equipment of buildings thereon; and
>
> (l) To acquire or improve any other public facilities or improvements deemed necessary by the governing body of the city or county;
>
> (6) "Neighborhood improvement district", an area of a city or county with defined limits and boundaries which is created by vote or by petition under sections 67.453 to 67.475 and which is benefited by an improvement and subject to special assessments against the real property therein for the cost of the improvement. [Emphasis added.]

Section 67.457, RSMo Supp. 1992, provides two methods for the establishment of a neighborhood improvement district. A district may be established by the governing body of a city or county "when a proper petition has been signed by the owners of record of at least two-thirds by area of all real property located within such proposed district." Section 67.457.3. Alternatively, a district may be established if the governing body of a city or county submits the question of creating such district to all qualified voters residing within such proposed district at a general or special election. Section 67.457.2.

> . . . The ballot upon which the question of creating a neighborhood improvement district is submitted to the qualified voters residing within the proposed district shall contain a question in substantially the following form:
>
> Shall ..... (name of city or county) be authorized to create a neighborhood improvement district proposed for the ..... (project name for the proposed improvement) and incur indebtedness and issue general obligation bonds to pay for all or part of the cost of public improvements within such district, the cost of all indebtedness so incurred to be assessed by the governing body of the ..... (city or county) on the property benefited by such improvements? [Emphasis added.]

The Honorable S. Sue Shear

The streets about which you are concerned are located in a neighborhood improvement district but have not been dedicated to the city. However, the streets are regularly used by the public and, under the facts presented, the owners of the streets have in effect given the public a license to travel on the streets. In considering the ability of a city to regulate traffic on streets similar to that about which you are concerned, the court in Nowotny v. Ryan, 534 S.W.2d 559 (Mo. App. 1976) stated:

> . . . Lastly, the ordinance's labelling of the two streets as "de facto public streets" is a correct assessment of the streets' dual nature. The two roads are privately owned and maintained, but the owners of the streets have apparently given the public a license to travel on the two streets. The courts of this state have held in similar circumstances that a city, in the exercise of its police powers, may regulate the use of motor vehicles upon all streets which are rightfully used by the public within its municipal boundaries, regardless of their legal status. It is the public uses to which a street is put that gives rise to the city's right and duty to regulate the flow of traffic upon it. City of Clayton v. Nemours, 237 Mo.App. 167, 164 S.W.2d 935[11-13] (1942).

Nowotny v. Ryan, supra, 534 S.W.2d at 562-563. Just as the city can regulate traffic on such streets, we conclude the streets can be improved using the procedures set forth in the Neighborhood Improvement District Act.

Such conclusion is consistent with the apparent intent of the legislature in enacting the Neighborhood Improvement District Act. Section 67.453(5)(b) expressly includes "improve streets," and Section 67.453(5)(g) refers to improving "any street or other facility by landscaping. . . ." Improvements to streets used by the public, even though such streets are not dedicated to the city, provide a benefit in the neighborhood improvement district.

Very truly yours,

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May 14, 1993

OPINION LETTER NO. 59-93

The Honorable Steve Ehlmann
Senator, District 23
State Capitol Building, Room 421
Jefferson City, Missouri 65101

Dear Senator Ehlmann:

This opinion letter is in response to your question asking:

> Does Article VII, Section 13, Mo. Const. 1945 permit local County voters to increase the compensation of the Circuit Clerk during the term of elected office?

Along with your question, you present the following statement of facts:

> St. Charles County is in the Eleventh Judicial Circuit and currently has a Circuit Clerk paid by the State. The Circuit Clerk . . . was most recently elected on November 6, 1990, for a four year term ending December 31, 1994. The Clerk's salary, paid by the State, is $38,958.00 per year.
>
> On April 7, 1992, St. Charles County voters adopted a Charter. . . .
>
> * * *
>
> The Charter further provides that "until December 31, 1994, the salary of the Circuit Clerk shall be the same salary being paid to the Recorder of Deeds on April 6, 1992." Section 4.305. The salary paid to the Recorder of Deeds on April 6,

> 1992 is $43,500.00 per year. This is $4,542.00 more per year. In essence, the Charter grants a raise to the Circuit Clerk during the middle of her elected term.[1]

Your question relates to Article VII, Section 13, of the Constitution of Missouri, which provides:

> Section 13. Limitation on increase of compensation and extension of terms of office. The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended.

In the statement of facts accompanying your question you explain that the office of circuit clerk is presently an elected position and that the circuit clerk elected November 6, 1990, is continuing in a four-year term ending December 31, 1994.

Section 483.083, RSMo Supp. 1992, provides in part:

> 483.083. Circuit clerks, compensation.--
>
> * * *
>
> 4. . . . The compensation of all circuit clerks shall be paid by the state and they shall be considered state employees for all purposes except the manner of their selection, appointment or removal from office; except that, the circuit clerk of the city of St. Louis, the circuit clerk of St. Louis County and the court administrator of Jackson County shall continue to be paid by the city and those counties and shall not become state employees, but the city of St. Louis, St. Louis County and Jackson County shall each

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[1]We have not been provided a copy of the charter adopted in St. Charles County. We assume there are no additional provisions relevant to your inquiry.

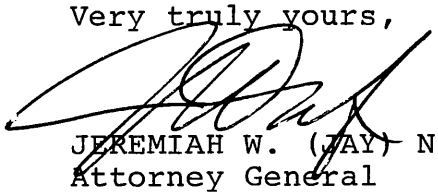
be paid an amount which is equivalent to a circuit clerk's salary as provided in subsection 3 of section 483.015.

* * *

In Missouri Attorney General Opinion No. 399, Brandom, 1969, a copy of which is enclosed, this office observed that a circuit clerk is an officer within the meaning of Article VII, Section 13. Id. at 2. In Opinion No. 399, this office concluded a statutory change resulting in an increase in compensation of particular officers would "become effective as to such officers upon the end of the present term of such officers." Id. at 3. See also Attorney General Opinion No. 327, Eiffert, 1974, a copy of which is enclosed.

The holding in these prior opinions is applicable here. Based on Article VII, Section 13, of the Constitution of Missouri, it is the opinion of this office that an increase in the compensation of the circuit clerk cannot be effective until the completion of the current term.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure: Opinion No. 399, Brandom, 1969
Opinion No. 327, Eiffert, 1974

DEPARTMENT OF ELEMENTARY
AND SECONDARY EDUCATION:
SCHOOLS:
SCHOOL RECORDS:
SUNSHINE LAW:

Under the facts presented, average Missouri Mastery and Achievement Test (MMAT) scores for each individual grade of each elementary school building within a school district are public records which are open to the public for inspection and copying.

May 5, 1993

OPINION NO. 68-93

The Honorable Charles W. Shields
Representative, District 28
State Capitol Building, Room 101G
Jefferson City, Missouri 65101

Dear Representative Shields:

This opinion is in response to your question asking whether average Missouri Mastery and Achievement Test (MMAT) scores for each individual grade of each elementary school building within a school district are public records. In addressing your question, we assume: 1) the school district has a record which sets forth the average MMAT scores for each individual grade of each elementary school building, and 2) the number of students in each individual grade of each elementary school building is large enough that the disclosure of the average MMAT scores for each individual grade of each elementary school building will not result in an individual student's MMAT scores being determinable.

Chapter 610, RSMo, is commonly referred to as the Missouri Sunshine Law. Section 610.010(2), RSMo Supp. 1992, defines a "public governmental body" to include a "school district." Section 610.010(4), RSMo Supp. 1992, defines a "public record" as:

> any record retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared and presented to the public governmental body by a consultant or other professional service paid for in whole or

> in part by public funds; provided, however, that personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years;

Under this definition of "public record," a record which sets forth the average MMAT scores about which you are concerned is a "public record."

Section 610.011, RSMo Supp. 1992, provides:

> 610.011. Liberal construction of law to be public policy.--1. It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.028 shall be liberally construed and their exceptions strictly construed to promote this public policy.
>
> 2. Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public as set forth in section 610.020, all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026, and all public votes of public governmental bodies shall be recorded as set forth in section 610.015. [Emphasis added.]

Under Section 610.011, public records (the average MMAT scores about which you are concerned) of a public governmental body (a school district) are to be open to the public for inspection and copying unless a closure provision applies.

Section 610.021, RSMo Supp. 1992, sets forth various categories of records which may be closed. Section 610.021(6) authorizes a public governmental body to close records to the extent they relate to the following:

> (6) Scholastic probation, expulsion, or graduation of identifiable individuals, including records of individual test or examination scores, however, personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years;

Your opinion request pertains to a record which sets forth the average MMAT scores for each individual grade of each elementary school building within a school district. Your opinion request does not relate to individual test scores. Therefore, the closure provision in Section 610.021(6) is not applicable.

In summary, a school district is a public governmental body to which the Sunshine Law applies. The records about which you are concerned are public records. Such public records are open to the public unless otherwise provided by law. No other law makes the records about which you inquire closed records so such records are open to the public.

CONCLUSION

It is the opinion of this office that under the facts presented, average Missouri Mastery and Achievement Test (MMAT) scores for each individual grade of each elementary school building within a school district are public records which are open to the public for inspection and copying.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

P.O. Box 899
(314) 751-3321

JAY NIXON
ATTORNEY GENERAL

February 10, 1993

OPINION LETTER NO. 73-93

The Honorable Judith K. Moriarty
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of the Missouri Constitution by adding a new article concerning discrimination. A copy of the initiative petition and the proposed amendment which you submitted to this office on February 1, 1993, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

April 9, 1993

OPINION LETTER NO. 74-93

The Honorable Nancy Farmer
Representative, District 64
State Capitol Building, Room 400CC
Jefferson City, Missouri 65101

Dear Representative Farmer:

This opinion letter pursuant to Section 105.955.16(2), RSMo Supp. 1992, is in response to your question asking whether or not there is a conflict of interest in your potential employment with Jeanneret and Associates. You have explained that Jeanneret and Associates is a management consulting firm currently under contract with the State of Missouri, Department of Highways and Transportation. You are considering employment in their St. Louis office working on a contract with a private sector company and performing office administration duties. You indicate you will not be involved in the project with the Department of Highways and Transportation.

The statutory section most applicable to your inquiry is Section 105.456, RSMo Supp. 1992, which prohibits certain acts by members of the General Assembly. Such section provides:

> 105.456. Prohibited acts by members of general assembly and statewide elected officials, exceptions.--1. No member of the general assembly or the governor, lieutenant governor, attorney general, secretary of state, state treasurer or state auditor shall:
>
> (1) Perform any service for the state or any political subdivision of the state or any agency of the state or any political subdivision thereof or act in his official capacity or perform duties associated with his position for any person for any consideration other than the compensation

provided for the performance of his official duties; or

(2) Sell, rent or lease any property to the state or political subdivision thereof or any agency of the state or any political subdivision thereof for consideration in excess of five hundred dollars per annum unless the transaction is made pursuant to an award on a contract let or sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest received; or

(3) Attempt, for compensation other than the compensation provided for the performance of his official duties, to influence the decision of any agency of the state on any matter, except that this provision shall not be construed to prohibit such person from participating for compensation in any adversary proceeding or in the preparation or filing of any public document or conference thereon. The exception for a conference upon a public document shall not permit any member of the general assembly or the governor, lieutenant governor, attorney general, secretary of state, state treasurer or state auditor to receive any consideration for the purpose of attempting to influence the decision of any agency of the state on behalf of any person with regard to any application, bid or request for a state grant, loan, appropriation, contract, award, permit other than matters involving a driver's license, or job before any state agency, commission, or elected official. Notwithstanding Missouri supreme court rule 1.10 of rule 4 or any other court rule or law to the contrary, other members of a firm, professional corporation or partnership shall not be prohibited pursuant to this subdivision from representing a person or other entity solely because a member of the firm, professional corporation or partnership serves in the general assembly, provided

that such official does not share directly in the compensation earned, so far as the same may reasonably be accounted, for such activity by the firm or by any other member of the firm. This subdivision shall not be construed to prohibit any inquiry for information or the representation of a person without consideration before a state agency or in a matter involving the state if no consideration is given, charged or promised in consequence thereof.

2. No sole proprietorship, partnership, joint venture, or corporation in which a member of the general assembly, governor, lieutenant governor, attorney general, secretary of state, state treasurer, state auditor or spouse of such official, is the sole proprietor, a partner having more than a ten percent partnership interest, or a coparticipant or owner of in excess of ten percent of the outstanding shares of any class of stock, shall:

(1) Perform any service for the state or any political subdivision thereof or any agency of the state or political subdivision for any consideration in excess of five hundred dollars per annum unless the transaction is made pursuant to an award on a contract let or sale made after public notice and competitive bidding, provided that the bid or offer accepted is the lowest received; or

(2) Sell, rent, or lease any property to the state or any political subdivision thereof or any agency of the state or political subdivision thereof for consideration in excess of five hundred dollars per annum unless the transaction is made pursuant to an award on a contract let or a sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest and best received. [Emphasis added.]

As emphasized above, Section 105.456.1(3) prohibits a member of the General Assembly from attempting, for compensation other than that provided for performing official duties, to influence the decision of any agency of the state on any matter. The facts you have provided explain that you will have no involvement with the contract with the Department of Highways and Transportation or, we assume, with any other state agency. Based on the facts you have provided, we conclude such employment would not be in violation of Section 105.456.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

CONCEALED WEAPONS:
COUNTY RECORDS:
FIREARMS:
RECORDS:
SHERIFFS:
SUNSHINE LAW:
WEAPONS:

Records relating to permits to acquire a concealable firearm retained by a county sheriff as required by Section 571.090.5, RSMo Supp. 1992, are public records open to inspection pursuant to Section 109.180, RSMo 1986, and Section 610.023, RSMo Supp. 1992.

April 27, 1993

OPINION NO. 80-93

The Honorable Mike Schilling
Representative, District 136
State Capitol Building, Room 115J
Jefferson City, Missouri 65101

Dear Representative Schilling:

This opinion is in response to your question asking:

> Are gun permit records kept by county sheriffs public records open to inspection under the state open records law?

Section 571.090, RSMo Supp. 1992, authorizes a county sheriff to issue permits to qualified applicants who want to acquire concealable firearms. A person seeking such a permit must file a written application with the sheriff of the county in which the applicant resides. An application is to be signed and verified by the applicant, and is to state only the following: the name, social security number, occupation, age, height, color of eyes and hair, residence and business addresses of the applicant, the reason for desiring the permit, and whether the applicant complies with each of the requirements specified in subsection 1 of Section 571.090. Subsection 5 of Section 571.090 provides in part: "The sheriff shall keep a record of all applications for permits, his action thereon, and shall preserve all returned permits."

Access to public records is provided by Section 109.180, RSMo 1986, and by Chapter 610, RSMo. Section 109.180, RSMo 1986, enacted in 1961, provides:

> 109.180. Public records open to inspection-- refusal to permit inspection, penalty.--Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen. Any official who violates the provisions of this section shall be subject to removal or impeachment and in addition shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars, or by confinement in the county jail not exceeding ninety days, or by both the fine and the confinement.

Section 610.023.2, RSMo Supp. 1992, provides:

> 610.023. Records of governmental bodies to be in care of custodian, duties--records may be copied but not removed, exception, procedure--denial of access, procedure.--
>
> * * *
>
> 2. Each public governmental body shall make available for inspection and copying by the public of that body's public records. No person shall remove original public records from the office of a public governmental body or its custodian without written permission of the designated custodian.
>
> * * *

For purposes of Chapter 610, a public governmental body is defined as "any legislative, administrative governmental entity created by the constitution or statutes of this state, ..." Section 610.010(2), RSMo Supp. 1992. A county sheriff is a "public governmental body." Charlier v. Corum, 774 S.W.2d 518 (Mo. App. 1989). A public record is defined in Section 610.010(4), RSMo Supp. 1992, as:

> (4) "Public record", any record retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared and presented to the public governmental body by a consultant or other professional service paid for in whole or in part by public funds; provided, however, that personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years;

The primary distinction between the two records laws is that Section 109.180 pertains to records which are kept pursuant to statute or ordinance while Chapter 610 provisions refer to virtually any record within the possession of a public governmental body.

Section 571.090.5 requires the sheriff to keep "a record of all applications for permits, his action thereon, and shall preserve all returned permits." Because these records are kept pursuant to statute, they are public records within the meaning of Section 109.180 as well as Section 610.023.

Having concluded that such permit records are public records, the next question to address is whether they are open to inspection and copying or whether they are closed pursuant to a provision of law. Section 571.090 does not expressly authorize or require closure of such permit records.

Section 610.011, RSMo Supp. 1992, provides in part:

> 610.011. Liberal construction of law to be public policy.--1. It is the public policy of this state that . . . records . . . of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.028 shall be liberally construed and their exceptions strictly construed to promote this public policy.

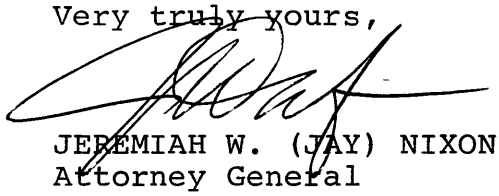
* * *

Section 610.021, RSMo Supp. 1992, lists fifteen exceptions authorizing closure of public records. None of these exceptions pertains to such permit records. Consequently, we conclude that in accordance with Section 109.180 and Chapter 610, such permit records retained by a county sheriff pursuant to Section 571.090.5 are public records open to inspection.

CONCLUSION

It is the opinion of this office that records relating to permits to acquire a concealable firearm retained by a county sheriff as required by Section 571.090.5, RSMo Supp. 1992, are public records open to inspection pursuant to Section 109.180, RSMo 1986, and Section 610.023, RSMo Supp. 1992.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JAY NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

REPLY TO:
SUPREME COURT BLDG.
P.O. BOX 899
JEFFERSON CITY, MO 65102

March 2, 1993

OPINION LETTER NO. 85-93

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall the Constitution of Missouri be amended to provide that all citizens shall be free from any form of discrimination based on that persons age, sex, race, creed, color, religion, national origin, sexual orientation or preference, political affiliation, handicap, or familial status?

See our Opinion Letter No. 73-93.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

CONSTITUTION:
POLITICAL SUBDIVISIONS:
PORT AUTHORITY:

Article VI, Section 23 of the Missouri Constitution does not prohibit a port authority organized under Chapter 68, RSMo, from owning all of the stock of a corporation which operates a railroad consistent with the statutory powers of a port authority.

September 30, 1993

OPINION NO. 110-93

The Honorable Peter D. Kinder
Senator, District 27
State Capitol Building, Room 328
Jefferson City, Missouri 65101

Dear Senator Kinder:

This opinion is in response to your question asking:

> May the Southeast Missouri Regional Port Authority, a political subdivision of the State of Missouri established under Chapter 68, RSMo, organize and wholly own a for-profit or not-for-profit Missouri corporation for the purpose of owning railroad right-of-way and tracks adjoining its Mississippi River port facility and operating railroad switching equipment (either owned, leased, or subcontracted to others) in order to assist tenants, owners, and shippers in moving railroad cars into the port facility from mainline railroad tracks, all in furtherance of the Port's statutory purposes and authorities?

Article VI, Section 23 of the Missouri Constitution provides:

> Section 23. Limitation on ownership of corporate stock, use of credit and grants of public funds by local governments. No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation,

> association or individual, except as provided in this constitution. [Emphasis added.]

The prohibition on stock ownership set forth in Article VI, Section 23 raises concern whether a port authority can own stock such as described in your question.

In State ex rel. Wagner v. St. Louis County Port Authority, 604 S.W.2d 592 (Mo. banc 1980), the Missouri Supreme Court considered whether a port authority is a political subdivision for purposes of Article VI, Section 26 of the Missouri Constitution. Article VI, Section 26 in describing to who it applies contains the same language as that in Article VI, Section 23, ". . . other political corporation or subdivision of the state." In concluding a port authority is not included within such phrase, the court looked to the definition of "other political subdivision" in Article X, Section 15 of the Missouri Constitution. Such section provides:

> Section 15. Definition of "other political subdivision". The term "other political subdivision," as used in this article, shall be construed to include townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax.

Because a port authority does not have the power to tax, a port authority is not included in such definition. With regard to the possible concern that such definition was only intended for use in defining the term "other political subdivision" for purposes of Article X, the court stated:

> 5. The definition of "other political subdivision" in art. X, § 15 includes the term as used in that article. No other definition for "political subdivision" appears in the constitution. After reviewing the constitutional debates of 1875 and 1945, we find no evidence to indicate that the framers intended the phrase "political subdivision" to be defined and used differently in different articles. The apparent purpose of finally including a definition was to give the courts, which previously had defined the

> term in a variety of ways, some guidance as to the framer's intentions.

Id. at 604. Therefore, the court applied the definition of "other political subdivision" in Article X, Section 15 to the term as used in Article VI, Section 26. The court stated:

> Although it is true that the General Assembly denominated every port authority as a political subdivision, we are compelled to apply the constitutional definition of political subdivision found in art. X, § 15 in determining whether an entity is entitled to the exemption of § 6.
>
> The Missouri Constitution lists several entities that shall be considered political subdivisions and completing the list is "any other public subdivision, public corporation of public quasi-corporation having the power to tax." In keeping with this language, this Court has determined that an authority without the power to tax does not fall within the definition of § 15 and therefore is not a political subdivision. Menorah Medical Center, supra, at 81. The legislature's use of the phrase "political subdivisions" in reference to port authorities does not operate to bring them within the constitutional definition. [Emphasis in original.]

Id. at 604-605. The court concluded that "a port authority is not a political subdivision" as the term is used in Article VI, Section 26. Id. at 604.

Although the Missouri General Assembly in Section 68.010, RSMo 1986, characterizes a port authority as a political subdivision of the state, the Missouri Supreme Court has concluded a port authority is not a political subdivision for purposes of Article VI, Section 26. The applicable language in Article VI, Section 26 is the same as the applicable language in Article VI, Section 23. Based on State ex rel. Wagner v. St. Louis County Port Authority, supra, we conclude that Article VI, Section 23 of the Missouri Constitution does not prohibit a port authority organized under Chapter 68, RSMo, from owning all of the stock of a corporation.

The next issue for consideration is the authority of a port authority to own and operate a railroad such as you describe in

your question. Section 68.025, RSMo Supp. 1992, setting out powers of a port authority, includes:

> 68.025. Powers of port authority.--1. Every local and regional port authority, approved as a political subdivision of the state, shall have the following powers to:
>
> * * *
>
> (11) Acquire, own, construct, lease, and maintain recreational facilities, industrial parks, industrial facilities, and terminals, terminal facilities, warehouses and any other type port facility;
>
> (12) Acquire, own, lease, sell or otherwise dispose of interest in and to real property and improvements situate thereon and in personal property necessary to fulfill the purposes of the port authority;
>
> (13) Acquire rights-of-way and property of any kind or nature within its port districts necessary for its purposes. Every port authority shall have the right and power to acquire the same by purchase, negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the port authority, and it may proceed in the manner provided by the laws of this state for any county or municipality. The power of eminent domain shall not apply to property actively being used in relation to or in conjunction with river trade or commerce, unless such use is by a port authority pursuant to a lease in which event the power of eminent domain shall apply;
>
> * * *
>
> 2. When private operators are not interested or available, the port authority shall have the power to operate a recreational facility, industrial parks, and terminals, and terminal facilities,

> warehouses and any other type port facility for a period not to exceed five years, after which the facility shall again be offered for competitive bids for private operation. In the event that such bids are not responsive, the port authority shall submit these bids to the highways and transportation commission for review. In the event that the commission concurs, the port authority may petition the commission, at least nine months before the expiration of the operating provision, to extend the provision for one additional period not to exceed five years.

We have not been provided specific information regarding the proposed operation of the railroad. However, as long as the operation of the railroad is consistent with the statutory powers of the port authority, we conclude the port authority is authorized to own all of the stock of the corporation operating the railroad.

CONCLUSION

It is the opinion of this office that Article VI, Section 23 of the Missouri Constitution does not prohibit a port authority organized under Chapter 68, RSMo, from owning all of the stock of a corporation which operates a railroad consistent with the statutory powers of a port authority.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

SCHOLARSHIPS:
SCHOOLS:
STUDENT FINANCIAL ASSISTANCE PROGRAM:
STUDENTS:

Students who are home-schooled under Section 167.031, RSMo Supp. 1992, and students who receive a certificate of high school equivalency under Sections 161.093 and 161.094, RSMo 1986, are not precluded from receiving a scholarship under the Higher Education Academic Scholarship Program authorized by Section 173.250, RSMo Supp. 1992.

August 24, 1993

OPINION NO. 112-93

Charles J. McClain
Commissioner of Higher Education
101 Adams Street
Jefferson City, MO 65101

Dear Commissioner McClain:

This opinion is in response to your questions asking:

1. Are Missouri residents who complete their high school education in a home-school situation eligible to participate in the Academic Scholarship Program, Section 173.250, RSMo Supp. 1992?

2. In the context of Section 173.250, RSMo Supp. 1992, does the completion of a home-school program satisfy the statutory requirement that "initial academic scholarships shall be offered in the academic year immediately following graduation from high school to Missouri high school seniors"?

3. In the event that the Attorney General's Office determines that home-schooled students are graduating high school seniors and can participate in the Academic Scholarship Program upon graduation, what evidence must the Coordinating Board for Higher Education collect to verify that home-schooled students have completed the equivalent of high school graduation?

> 4. Are Missouri residents who have obtained a certificate of high school equivalence by passing the General Educational Development (GED) examination eligible to participate in the Academic Scholarship Program, Section 173.250, RSMo Supp. 1992?

Along with your questions, you state:

> The Coordinating Board for Higher Education (CBHE) has received inquiries from two separate groups of students regarding the eligibility requirements for the Academic Scholarship Program, Section 173.250, RSMo (Supp. 1992). The two groups are students who have been home-schooled and students who have obtained a certificate of high school equivalence by passing the General Educational Development (GED) examination. . . .

Section 173.250, RSMo Supp. 1992, establishes a "Higher Education Academic Scholarship Program" (Academic Scholarship Program) to provide scholarships for Missouri citizens to attend a Missouri college or university of their choice. The eligibility requirements for a student seeking an initial academic scholarship are set forth at Section 173.250.4(1) RSMo Supp. 1992:

> (1) Initial academic scholarships shall be offered in the academic year immediately following graduation from high school to Missouri high school seniors whose composite scores on the American College Testing Program (ACT) or the Scholastic Aptitude Test (SAT) of the College Board are in the top three percent of all Missouri students taking those tests during the school year in which the scholarship recipients graduate from high school. . . . [Emphasis added.]

Section 173.250 does not define the terms "graduation from high school," "high school seniors," or "graduate from high school." Section 173.250.2, RSMo Supp. 1992, states that the definitions of the terms set forth in Section 173.205, RSMo, are to be applied to the terms used in Section 173.250. However, Section 173.205, RSMo 1886, does not contain any definition for

"high school," "graduation from high school," "high school seniors," or "graduate from high school."

Section 160.011, RSMo Supp. 1992, provides in part:

> 160.011. Definitions, certain chapters.--As used in chapters 160, 161, 162, 163, 164, 165, 167, 168, 170, 171, 177 and 178, RSMo, the following terms mean:
>
> * * *
>
> (3) "High school", a public school giving instruction in two or more grades not lower than the ninth nor higher than the twelfth grade;
>
> * * *
>
> (6) "Public school" includes all elementary and high schools operated at public expense;
>
> * * *

The introductory phrase to Section 160.011 lists the chapters to which the definitions in such section are applicable. Chapter 173, RSMo, containing the sections relating to the Academic Scholarship Program, is not one the chapter enumerated in the introductory phrase. Furthermore, the courts have held that a restricted definition of a term in a general act does not necessarily control the meaning of the term as used in a subsequent special act. See State v. Schwartzmann Service, 40 S.W.2d 479, 481 (Mo. App. 1931). Therefore, we conclude the definitions in Section 160.011 are not controlling as to the meaning of terms used in Section 173.250.

Section 167.031, RSMo Supp. 1992, provides in part in subsection 1 that: "A parent, guardian or other person in this state having charge, control, or custody of a child between the ages of seven and sixteen years of age shall cause the child to attend regularly some public, private, parochial, parish, or home school not less than the entire school term of the school which the child attends; except that . . . ." The exceptions are not applicable to your inquiry. Subsequent subsections of Section 167.031 discuss home schooling:

> 2. (1) As used in sections 167.031 to 167.071, a "home school" is a school,

whether incorporated or unincorporated, that:

(a) Has as its primary purpose the provision of private or religious-based instruction;

(b) Enrolls pupils between the ages of seven and sixteen years, of which no more than four are unrelated by affinity or consanguinity to the third degree; and

(c) Does not charge or receive consideration in the form of tuition, fees, or other remuneration in a genuine and fair exchange for provision of instruction.

(2) As evidence that a child is receiving regular instruction, the parent shall:

(a) Maintain the following records:

a. A plan book, diary, or other written record indicating subjects taught and activities engaged in; and

b. A portfolio of samples of the child's academic work; and

c. A record of evaluations of the child's academic progress; or

d. Other written, or credible evidence equivalent to subparagraphs a., b. and c.; and

(b) Offer at least one thousand hours of instruction, at least six hundred hours of which will be in reading, language arts, mathematics, social studies and science or academic courses that are related to the aforementioned subject areas and consonant with the pupil's age and ability. At least four hundred of the six hundred hours shall occur at the regular home school location.

* * *

5. The production by a parent of a daily log showing that a home school has a course of instruction which satisfies the requirements of this section shall be a

> defense to any prosecution under this section and to any charge or action for educational neglect brought pursuant to chapter 210, RSMo.

Sections 161.093 and 161.094, RSMo 1986, discuss the Missouri high school equivalency certificate. Such sections provide:

> 161.093. High school equivalency certificate may be issued by state board, when.--Any person who has not obtained a high school diploma or certificate of graduation and who is a resident of Missouri or who lives on a federal reservation within Missouri or who is a member of the armed forces of the United States stationed in Missouri may become an applicant for a high school equivalency certificate to be issued by the department of elementary and secondary education as provided under rules and regulations adopted by the state board of education.
>
> 161.094. Examinations for high school equivalency certificate, what tests acceptable.--The department of elementary and secondary education shall provide for examination of such applicants at least twice each year at places reasonably convenient for the applicants. The examination shall be designed to test the applicant's knowledge of subject matter usually presented in the courses required to be successfully completed by those graduating from the public high schools of the state. The certificate of equivalence may also be issued on the basis of test scores certified to the state board of education by the United States Armed Forces Institute, or a similar agency approved by the state board of education.

Statutory construction must always seek to find and further the intent of the legislature. Centerre Bank of Crane v. Director of Revenue, 744 S.W.2d 754, 759 (Mo. banc 1988). The apparent intent of the Academic Scholarship Program is to provide scholarships to the brightest Missouri students to assist them in attending the Missouri college or university of their choice. To qualify for such scholarship, the student must

score on the ACT or the SAT in the top three percent of all Missouri students taking those tests. The issue you pose is whether a student who is able to score in the top three percent should be precluded from receiving such scholarship because such student was home-schooled or received a certificate of high school equivalency. Denying students who are bright enough to score in the top three percent on the ACT or the SAT such scholarship because such students were home-schooled or received certificates of high school equivalency appears inconsistent with the apparent intent of the Academic Scholarship Program.

In re Marriage of Copeland, 850 S.W.2d 422 (Mo. App. E.D. 1993) considered a certificate of high school equivalency in the context of termination of child support pursuant to Section 452.340, RSMo (Cum. Supp. 1990). The court stated:

> Father moved for a declaration of emancipation and termination of child support for his eighteen year old child. He claimed that his child did not meet the statutory requirements of § 452.340.5 RSMo (Cum. Supp. 1990), for continued support because his child was not enrolled in high school when he turned eighteen and his subsequent junior college enrollment did not follow graduation from secondary school. The trial court denied the motion. We affirm. We hold that the child's enrollment in the Adult Basic Education Program at the Cape Girardeau Area Vocation-Technical School was enrollment in a secondary school program of instruction. We further hold that the child's subsequent timely enrollment in junior college after receiving his high school equivalency certificate met the statutory requirements for timely enrollment in a vocational or higher educational institution following graduation from secondary school. [Emphasis added.]

In addressing the high school equivalency certificate as it relates to the term "graduation from a secondary school," the court stated:

> [W]e hold that receipt of a high school equivalency certificate which entitles the student to continue his or her education is encompassed in the term "graduation from a

> secondary school" as that term is used in § 452.340.5. The date that certificate was awarded is therefore equivalent to a date of "graduation from a secondary school" under § 452.340.5.

Id. at 426.

Turning to your specific questions, your first question asks if Missouri residents who complete their high school education in a home-schooled situation are eligible to participate in the Academic Scholarship Program. We conclude such students are eligible to participate in the Academic Scholarship Program. If a home-schooled student is able to score in the top three percent of all Missouri student taking the ACT or the SAT, the student is apparently among the brightest Missouri students who the Academic Scholarship Program is designed to assist. Denying such student a scholarship solely because the student was home-schooled would be inconsistent with the apparent purpose of the statute.

You further inquire about the timing of the award of scholarships to home-schooled students since the scholarships are to be awarded in the academic year immediately following graduation from high school. Section 167.031 provides for the parent to maintain written records indicating the subjects taught and activities engaged in by a home-schooled student. Such written records should provide guidance on when such student is receiving instruction at the high school senior level.

Your final question concerns students who obtain a high school equivalency certificate. We conclude such students are eligible to participate in the Academic Scholarship Program. If a student who obtains a high school equivalency certificate is able to score in the top three percent of all Missouri students taking the ACT or the SAT, the student is apparently among the brightest Missouri students who the Academic Scholarship Program is designed to assist. Denying such student a scholarship solely because the student received a high school equivalency certificate would be inconsistent with the apparent purpose of the statute. Furthermore, In re Marriage of Copeland, supra, held receipt of a high school equivalency certificate was encompassed in the term "graduation from a secondary school."

With regard to the timing of the award of scholarships to students who receive a certificate of high school equivalency, In re Marriage of Copeland, supra, stated the date the certificate is awarded is equivalent to the date of "graduation from a secondary school." Since Section 173.250.4(1) provides initial academic scholarships are to be offered in the academic

year immediately following graduation from high school, the date the certificate is awarded is to be considered the date of "graduation from high school." Section 173.250.4(1) further requires the scholarships to be awarded "to Missouri high school seniors." This requirement must still be met even if the student receives a certificate of high school equivalency and may preclude many who receive a certificate of high school equivalency from being eligible for receipt of a scholarship. However, because the student receives a certificate of high school equivalency does not preclude the student from receiving a scholarship under the Academic Scholarship Program.

Furthermore, to interpret Section 173.250.4(1) to preclude students who are home-schooled and students who receive a certificate of high school equivalency from participating in the Academic Scholarship Program would raise the constitutional issue of whether such students would be denied "equal protection" as guaranteed by the constitution. See Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982). When the words used in a statute permit a reasonable construction consistent with the obvious legislative intent and within constitutional limitations, a construction leading to invalidity should be avoided. City of Kirkwood v. Allen, 399 S.W.2d 30, 36 (Mo. banc 1966). See also Lederer v. State, Department of Social Services, Division of Aging, 825 S.W.2d 858, 863 (Mo. App. 1992).

CONCLUSION

It is the opinion of this office that students who are home-schooled under Section 167.031, RSMo Supp. 1992, and students who receive a certificate of high school equivalency under Sections 161.093 and 161.094, RSMo 1986, are not precluded from receiving a scholarship under the Higher Education Academic Scholarship Program authorized by Section 173.250, RSMo Supp. 1992.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

RULES AND REGULATIONS:
ST. LOUIS BOARD OF POLICE
COMMISSIONERS:
TERM OF OFFICE:

The St. Louis Board of Police Commissioners has no authority to provide by rule for the president and vice president of the board to have two year terms of office.

May 18, 1993

OPINION NO. 114-93

The Honorable Ronald Auer
Representative, District 59
State Capitol Building, Room 411-2
Jefferson City, Missouri 65101

Dear Representative Auer:

This opinion is in response to your question asking:

> Whether the St. Louis Board of Police Commissioners can pass a rule which provides tenure for the officers and increases the number necessary to obtain a majority from three to four when the Section 84.020, RSMo 1986, provides that the Board shall appoint one of its members as President and Vice-President in that the Board's rule is in conflict with the Statute?

You have provided the following information relating to the question you pose:

> In October 1992, the St. Louis Board of Police Commissioners (hereinafter "Board") approved an amendment to the City of St. Louis Metropolitan Police Department Manual. The Board has five voting members. The Board voted to delete Sections 1.001, 1.002, 1.003, 1.004, 1.005, 1.006 and 1.007. In lieu of those provisions, the Board inserted a new Section 1.002. The two provisions relevant to this Memorandum are 1.002(c) and

1.002(h). 1.002(c) states in part as follows:

"The officers shall each hold office for a term of two years or until he/she sooner dies, resigns, or becomes disqualified...."

1.002(h) states:

"This Rule may be altered, amended or repealed in whole or in part at any regular meeting of the Board or vote of not less than four (4) members of the Board then in office provided that the amendment has been submitted to the Board in writing at the previous regular meeting of the Board."

Section 84.020, RSMo 1986, relating to the St. Louis Board of Police Commissioners, provides:

84.020. Board of police commissioners--members--officers (St. Louis).--In all cities of this state that now have, or may hereafter attain, a population of five hundred thousand inhabitants or over, there shall be, and is hereby established, within and for said cities, a board of police, to consist of four commissioners, as provided in sections 84.040 to 84.080, together with the mayor of said cities for the time being, or whosoever may be officially acting in that capacity, and said board shall appoint one of its members as president, and one member who shall act as vice president during the absence of the president; and such president or vice president shall be the executive officer of the board and shall act for it when the board is not in session.

While such section provides for the Board to appoint one of its members as president and one of its members as vice president, such section does not provide a term during which such members shall hold the offices of president and vice president.

In Missouri Attorney General Opinion No. 80, Scott, July 12, 1961, a copy of which is enclosed, this office addressed a similar situation involving the commissioners of a

special road district who pursuant to statute elected one of their number as president, another as vice president, and another as secretary. The statute was silent with respect to the term of office of such officers elected by the board. This office concluded that in such situation, the applicable rule is that the officers are elected for an indefinite period and are removable at the will of the appointive power. See State ex inf. Barrett ex rel. Bradshaw v. Hedrick, 294 Mo. 21, 241 S.W. 402, 416 (banc 1922). See also McQuillin Mun Corp §12.112 (3rd Ed).

In the situation about which you are concerned, the Board has attempted by rule to fix the terms of the officers at two years. In Kinsland v. Mackey, 217 N.C. 508, 8 S.E.2d 598 (1940), the governing body of a town in North Carolina had the power to appoint a tax collector for said town but no term of office was provided. The governing body of the town attempted to fix a definite term for the office. In holding that the tax collector only held office at the will or pleasure of the governing body, the North Carolina Supreme Court stated:

> The applicable rule, which appears to have been generally and almost universally adopted, is that where the term of office of a public officer is not prescribed by law, the office is held during the pleasure of the authority making the appointment. Likewise, the general rule is that in the absence of all constitutional or statutory provision for the removal of such public officers, the power of removal is incident to the power of appointment, and is discretionary and may be exercised without notice or hearing. [Citations omitted.]
>
> These general rules have been applied in well considered decisions by the courts of many states to cases in which the appointing authority has attempted to fix a definite term for the particular office. [Citation omitted.] The trend of these decisions is that the implied power of the appointing authority to remove at pleasure an officer whose term of office is not prescribed by law cannot be contracted away so as to bind the appointing authority to retain an appointee for a fixed period.
>
> * * *

> Under these principles, no definite term having been prescribed by statute for the office of tax collector for the town of Canton, the appointment of defendant at the regular meeting of the board of aldermen on 5 June, 1939, entitled him to hold the office only at the will or pleasure of the board. And this is true, even though it be conceded that the board by resolution specified that the appointment be for a definite term. Hence, in the absence of constitutional or statutory provision therefor, the board, under the power of removal incident to the power of appointment, had the power to remove the defendant at any time without cause, notice or hearing. Id., 8 S.E.2d at 600.

See also Horstman v. Adamson, 101 Mo. App. 119, 74 S.W. 398 (1903) holding that the attempted appointment by a county clerk of a deputy county clerk for a fixed time period was void. Therefore, we conclude that the rule of the St. Louis Board of Police Commissioners attempting to fix the terms of office of the president and vice president at two years is void.

The next issue for consideration is the validity of that part of the rule requiring a vote of not less than four (4) members of the Board to alter, amend or repeal the rule. Section 1.050, RSMo 1986, provides:

> 1.050. Majority may act for all.--Words importing joint authority to three or more persons shall be construed as authority to a majority of the persons, unless otherwise declared in the law giving the authority.

Pursuant to such section, the majority of the board members may act on behalf of the board "unless otherwise declared in the law giving the authority." The statutes applicable to the Board do not contain any provision requiring four (4) members of the Board to act with respect to altering, amending or repealing a rule. The rule requiring a vote of not less than four (4) members is contrary to the provisions of Section 1.050. It is well settled that a municipal ordinance must be in harmony with a general law of the state upon the same subject and is void if in conflict with the state law. Kansas City v. LaRose, 524 S.W.2d 112, 116 (Mo. banc 1975). Therefore, we conclude that the

part of the rule requiring a vote of not less than four (4) members of the Board to act is void.

CONCLUSION

It is the opinion of this office that the St. Louis Board of Police Commissioners has no authority to provide by rule for the president and vice president of the board to have two year terms of office.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure: Opinion No. 80, Scott, July 12, 1961

CITY JUDGES:
JUDGES:
QUALIFICATIONS FOR OFFICE:
QUALIFICATIONS:

Section 479.020.7, RSMo, as amended by Conference Committee Substitute for House Substitute No. 2 for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 88, 87th General Assembly, First Regular Session (1993) prohibits a municipal judge in a fourth class city who has reached his seventieth (70th) birthday from continuing to serve after the effective date of such bill, August 28, 1993.

August 27, 1993

OPINION NO. 122-93

The Honorable Gary Witt
Representative, District 29
State Capitol Building, Room 235B-B
Jefferson City, Missouri 65101

Dear Representative Witt:

This opinion is in response to your question which can be summarized as follows:

> Is a municipal judge between the ages of seventy and seventy-five years old required to retire on August 28, 1993, the effective date of Conference Committee Substitute for House Substitute No. 2 for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 88, 87th General Assembly, First Regular Session (1993), or should the judge be allowed to complete the term to which he was elected and retire at the end of that term?

The municipal judge about whom you are concerned is serving as municipal judge in a fourth class city.

Section 479.020.7, RSMo 1986, required municipal judges to retire at the age of seventy-five. Conference Committee Substitute for House Substitute No. 2 for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 88, 87th General Assembly, First Regular Session (1993) (hereinafter "Senate Bill No. 88") amended Section 479.020.7 to

require all municipal judges to retire at the age of seventy. Section 479.020.7 as amended by Senate Bill No. 88 provides:

> 7. Municipal judges shall be at least twenty-one years of age. No person shall serve as municipal judge after he has reached his [seventy-fifth] seventieth birthday.

The language deleted in this subsection by Senate Bill No. 88 is shown in brackets, and the language added is underlined.

Article V, Section 23 of the Missouri Constitution provides with respect to municipal judges in relevant part as follows:

> . . . The selection, tenure and compensation of such judges and such personnel shall be as provided by law, or in cities having a charter form of government as provided by such charter. . . .[1]

In State ex rel. Hall v. Vaughn, 483 S.W.2d 396 (Mo. banc 1972), the Missouri Supreme Court considered a constitutional amendment imposing a 70 year old age maximum on certain judges then in office. The issue was whether a circuit judge serving a six-year term must immediately retire and terminate his services as a judge upon the imposition of the new 70 year old age maximum or whether the judge was entitled to complete his term.

In that case the constitutional amendment contained language reflecting that the framers of the constitutional amendment as well as the people intended a judge selected for a designated term to serve out his full term regardless of the age attained during such term (except to the extent his term might have been limited by age at the time of his election). The court pointed out:

---

[1]Because the situation about which you are concerned involves a municipal judge in a fourth class city, this opinion does not address a municipal judge serving in a city having a charter form of government where the charter contains a provision inconsistent with Section 479.020.7.

> For instance, Article Five, as now amended, also contains the following provisions: (1) Section 29(c)(1) (in so far as it contemplates possible adoption of the non-partisan court plan in other circuits) provides, in part: "Any judge holding office, or elected thereto, at the time of the election by which the provisions of section 29(a)-(g) become applicable to his office, shall, unless removed for cause, remain in office for the term to which he would have been entitled had the provisions of sections 29(a)-(g) not become applicable to his office."; (2) Section 31, paragraph 3, provides in part: "The adoption of this amendment shall not affect the term or tenure of any right or duty of any judge of a court of appeals who is in office on the effective date of this amendment."; and, (3) Section 31, paragraph 7, provides, in part: "The commissioners * * * holding office on the effective date of this amendment shall continue to hold office as commissioners of the court or court of appeals districts in which they serve until the end of their terms. . . ." [Emphasis in original.]

Id. at 399. Although the provisions cited above did not apply to the specific judge to whom the case related, the court considered such provisions as "fall[ing] into a harmonious whole" indicating an intent the circuit judge to whom the case related was entitled to serve out his full term. Id.

In discussing the authority to change the conditions of an office during its term, the court in State ex rel. Hall v. Vaughn, supra, stated:

> Quite consistently, the courts of this country have declared that public offices are created solely to meet the needs of the public and that the incumbent thereof has no contractual or vested right to the particular office; and, on that premise, it has been concluded that: "The power to create an office generally includes the power to modify or abolish it." . . . In fact, this court has so held from the early case of State v. McBride, 4 Mo. 303, 29

> Am.Dec. 636 (1836) to the recent case of State v. Davis, 418 S.W.2d 163 (1967). In McBride approval was given to the abolishment of an office, while in Davis shortening the term of an office was approved. Other decisions of this court during the interim on related questions may be found in . . . . As even a casual reading of such cases will reflect, the basic principle upon which the holdings therein were based was that public offices are created to meet the needs of the people; and, that when such need ceases to exist, there is no obligation or necessity to continue a useless office. From this premise, the courts have been able to rationalize the validity of making other structural changes in an office, such as shortening the term provided for the occupant of such an office.

Id. at 397-398.

Consistent with the language quoted above is the discussion in O'Neil v. Baine, 568 S.W.2d 761 (Mo. banc 1978) where the Missouri Supreme Court considered the statute requiring mandatory retirement for magistrate and probate judges at age seventy.

> A judge does not have a vested interest in public office, nor is the office fundamental property within the meaning of the Constitution. Public officers are created solely to meet the needs of the public and the incumbent has no contractual or vested right to the office. State ex rel. Hall v. Vaughn, 483 S.W.2d 396, 397 (Mo. banc 1972). Decisions of the Supreme Court of the United States conclude there is no right of governmental employment per se. Murgia, 427 U.S. at 313, 96 S.Ct. 2562. There is no constitutional right to be a judge.

Id. at 768.

In the situation about which you are concerned, the language in Section 479.020.7 as amended by Senate Bill No. 88 is clear and unambiguous: "No person shall serve as municipal

judge after he has reached his seventieth birthday." There is no language comparable to the language in the constitutional amendment considered in State ex rel. Hall v. Vaughn, supra, indicating an intent that the imposition of an age maximum was not intended to affect those judges then serving a term of office. Following the general principles set forth in State ex rel. Hall v. Vaughn, supra, and O'Neil v. Baine, supra, we conclude that the imposition of the new 70 year old age maximum applies to municipal judges in fourth class cities now serving a term of office.

CONCLUSION

It is the opinion of this office that Section 479.020.7, RSMo, as amended by Conference Committee Substitute for House Substitute No. 2 for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 88, 87th General Assembly, First Regular Session (1993) prohibits a municipal judge in a fourth class city who has reached his seventieth (70th) birthday from continuing to serve after the effective date of such bill, August 28, 1993.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

July 7, 1993

OPINION LETTER NO. 127-93

The Honorable Judith K. Moriarty
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of the Missouri Constitution by adding a new article prohibiting special privilege laws based on sexual orientation. A copy of the initiative petition and the proposed amendment which you submitted to this office on June 30, 1993, is attached for reference.

We conclude that the petition must be rejected as to form for the following reasons:

1. The standard form for initiative petitions, as set out in Section 116.040, RSMo 1986, requires that the "county" followed by a blank appear at the top of each page of the petition. The initiative petition as proposed does not include this material. Section 116.060, RSMo 1986, states that "each page of an initiative petition or referendum petition shall include signatures of voters from only one county." The absence of a county designation on each page of the petition may make it more difficult to assure compliance with this requirement.

2. The initiative petition does not contain an enacting clause. Article III, Section 50 of the Missouri Constitution requires and sets forth the form of the enacting clause for proposed constitutional amendments and proposed laws. The mandatory nature of this language was addressed in State ex rel. Scott v. Kirkpatrick, 484 S.W.2d 161 (Mo. banc 1972).

Because of our rejection of the form of the petition for the reasons itemized above, we have not reviewed the petition to determine if additional deficiencies may exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

NATURAL RESOURCES, DEPARTMENT OF:
SOLID WASTES:

A city or county authorized by subsection 2 of Section 260.215, RSMo Supp. 1992, to adopt ordinances or orders, rules, regulations, or standards for the storage, collection, transportation, processing or disposal of solid wastes is authorized to adopt ordinances or orders that require the recycling of certain solid wastes.

December 14, 1993

OPINION NO. 128-93

The Honorable Harold L. Caskey
Senator, District 31
State Capitol Building, Room 320
Jefferson City, MO 65101

Dear Senator Caskey:

This opinion is in response to your question asking:

> May a county commission of a township county of the third classification adopt ordinances or orders that require the recycling of certain solid wastes in unincorporated areas of the county or in cities, towns or villages with a population of fewer than five hundred persons?

Subsection 2 of Section 260.215, RSMo Supp. 1992, provides:

> 2. Any city or county may adopt ordinances or orders, rules, regulations, or standards for the storage, collection, transportation, processing or disposal of solid wastes which shall be in conformity with the rules and regulations adopted by the

> department for solid waste management systems. Nothing in sections 260.200 to 260.245 shall usurp the legal right of a city or county from adopting and enforcing local ordinances, rules, regulations, or standards for the storage, collection, transportation, processing, or disposal of solid wastes equal to or more stringent than the rules or regulations adopted by the department pursuant to sections 260.200 to 260.245. Any county or city which adopts orders or ordinances for the management of solid waste shall ensure that such orders or ordinances provide for safe and adequate management of solid waste pursuant to an approved plan under section 260.220 and are not substantially inconsistent with the requirements of sections 260.200 and 260.245 and the rules and regulations promulgated pursuant thereto. [Emphasis added.]

Section 260.200(23), as enacted by House Committee Substitute for Senate Committee Substitute for Senate Bills Nos. 80, 100, 140 & 17, 87th General Assembly, First Regular Session (1993), defines "recycling" for purposes of Sections 260.200 to 260.345, RSMo, as: "the separation and reuse of materials which might otherwise be disposed of as solid waste." "Processing" is not defined in Section 260.200 for purposes of Sections 260.200 to 260.345; however, Webster's Third New International Dictionary defines "process" as including "a succession of related changes by which one thing gradually becomes something else" and "a particular method or system of doing something, producing something, or accomplishing a specific result." When a court interprets statutory language, it must ascertain the intent of the legislature and, in doing so, it considers the plain and ordinary meaning of terms. Morton v. Brenner, 842 S.W.2d 538, 541 (Mo.banc 1992). Based on the meaning of the terms "recycling" and "processing", "recycling" of solid wastes is one method of "processing" solid wastes. Therefore, a city or county authorized to adopt ordinances or orders, rules, regulations, or standards for the "processing" of solid wastes is authorized to adopt ordinances or orders, rules, regulations, or standards for the "recycling" of solid wastes.

Furthermore, in interpreting statutes, courts strive to implement the policy of the legislature, and also harmonize all provisions of the statute. 20th & Main Redevelopment Partnership v. Kelley, 774 S.W.2d 139, 141

(Mo.banc 1989). The purpose and object of the statute must always be considered and the court must presume the legislature intended a logical result. Larabee v. Washington, 793 S.W.2d 357, 361 (Mo.App. 1990). When a court construes a statute, it does so in light of the purposes the legislature intended to accomplish and the evils it intended to cure. Brown v. Melahn, 824 S.W.2d 930, 933 (Mo.App. 1992). Sections 260.200 to 260.345 indicate a legislature policy to favor recycling. For example, Section 260.225.2(1), RSMo Supp. 1992, provides the model solid waste management plan prepared by the Department of Natural Resources (hereinafter the "Department") shall emphasize waste reduction and recycling. Section 260.225.8(5) provides for the Department, in coordination with other appropriate state agencies, to initiate recycling programs within state government. Section 260.310.5, RSMo Supp. 1992, authorizes any county within a solid waste management district, in cooperation with the district, to require solid waste transported from outside the district to a solid waste processing facility or solid waste disposal area within the district to be subject to the same requirements as solid waste originating within the district including the separation of recyclable materials. Section 260.325.4(3), RSMo Supp. 1992, provides for the solid waste management plan submitted by a solid waste management district to the Department to delineate provisions for the collection of recyclable materials or collection points for recyclable materials. Section 260.325.4(13) further requires the plan identify methods by which rural households that are not served by a regular solid waste collection service may participate in recycling. Section 260.335.2(3), as enacted by Senate Bills Nos. 80, 100, 140 & 17, makes available funds to provide incentives to operators of solid waste management areas to remove recyclable items from solid wastes, and Section 260.335.3 provides the criteria for allocating funds shall establish a priority for proposals which provide methods of recycling. Section 260.344.2(2), as enacted by Senate Bills Nos. 80, 100, 140 & 17, provides the report prepared by the Source Reduction Advisory Board shall contain recommendations for a program to maximize the recycling and reuse of packaging materials. Based on the statutory provisions above, among others, a legislative policy favoring recycling appears apparent.

Consistent with the thoughts expressed above is Missouri Attorney General Opinion Letter No. 189, Ashford, 1977, a copy of which is enclosed. In that opinion letter this office concluded a city or county may, pursuant to the police powers granted to it by Section 260.215, RSMo Supp. 1975,

require that all solid wastes, or certain categories thereof, generated within the jurisdiction of the city or county be disposed of at approved solid waste recovery facilities, rather than be buried at landfills.

Based on the plain and ordinary meaning of the terms and the apparent legislative policy favoring recycling, we conclude that a city or county authorized by subsection 2 of Section 260.215 to adopt ordinances or orders, rules, regulations, or standards for the storage, collection, transportation, processing or disposal of solid wastes is authorized to adopt ordinances or orders that require the recycling of certain solid wastes. It has been the long-standing policy of this office not to opine on the validity of an ordinance or order enacted by a local government. Therefore, we do not opine on the validity of a specific ordinance or order that may be enacted by a particular city or county.

CONCLUSION

It is the opinion of this office that a city or county authorized by subsection 2 of Section 260.215, RSMo Supp. 1992, to adopt ordinances or orders, rules, regulations, or standards for the storage, collection, transportation, processing or disposal of solid wastes is authorized to adopt ordinances or orders that require the recycling of certain solid wastes.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure:
Opinion Letter No. 189, Ashford, 1977

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

July 12, 1993

OPINION LETTER NO. 129-93

The Honorable Judith K. Moriarty
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of Chapter 130, RSMo, and specifically the enactment of five new sections to be known as Sections 130.100, 130.110, 130.120, 130.130 and 130.135. A copy of the initiative petition which you submitted to this office on July 2, 1993, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

November 10, 1993

OPINION LETTER NO. 136-93

Robert D. Schollmeyer
Osage County Prosecuting Attorney
Post Office Box 378
Linn, Missouri 65051

Dear Mr. Schollmeyer:

This opinion letter is in response to your question asking:

> Under the Open Meetings Law, does a county commission have to give individualized notice to a newspaper when the commission plans to have a special meeting or may it simply post notice of the meeting in the county clerk's office within the time limits specified by the Open Meetings Law?

You have indicated the local newspaper has requested the county commission notify it whenever the county commission announces that it will have a special meeting.

Chapter 610, RSMo, to which your question relates, is commonly referred to as the Sunshine Law and is sometimes referred to as the Open Meetings Law. The Sunshine Law was revised in 1993 by Conference Committee Substitute for Senate Committee Substitute for House Bill No. 170, 87th General Assembly, First Regular Session (hereinafter "House Bill No. 170"). Section 610.010(4), as amended by House Bill No. 170, defines "public governmental body" for purposes of the Sunshine Law as: "any legislative, administrative governmental entity created by the constitution or statutes of this state . . . ." The county commission is created in Chapter 49, RSMo, and is a "public governmental body" as defined for purposes of the Sunshine Law.

Section 610.020, as amended by House Bill No. 170, provides for a public governmental body to give notice of each meeting. Such section provides in relevant part:

Robert D. Schollmeyer

> 610.020. 1. All public governmental bodies shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include making available copies of the notice to any representative of the news media who requests notice of meetings of a particular public governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.
>
> 2. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours exclusive of weekends and holidays when the facility is closed, prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Every reasonable effort shall be made to grant special access to the meeting to handicapped or disabled individuals. [Emphasis added.]

* * *

As provided in subsection 1, notice includes two forms of notice: 1) making available copies of the notice to any representative of the news media who requests notice of meetings, and 2) posting the notice on a bulletin board or other prominent place. The use of the word "and" indicates that both forms of notice are required. Therefore, the public governmental body is required to make available copies of the notice to any representative of the news media who requests notice of meetings of the public governmental body in addition

to the posting of notice on a bulletin board or other prominent place.

The statute requires "making available" copies of the notice to any representative of the news media who requests notice of meetings (hereinafter sometimes referred to as "a representative"). "Making available" contemplates making a representative aware of the meeting. See Lambert v. McClure, 595 A.2d 629 (Pa. Super. 1991)(interpreting "make available"). It is not feasible to address all of the various situations that might arise in making available copies of a notice of a meeting to a representative. It may be the public governmental body will have the notice prepared far enough before the meeting that a copy can be mailed to the business address of a representative. It may be the public governmental body will need to fax a copy to the office of a representative or have a copy hand delivered to the office of a representative. The procedure for making a representative aware of a particular meeting will depend on the facts of the specific situation; however, more is required than simply posting the notice of the meeting in the county clerk's office.

This conclusion is consistent with the public policy of the state regarding the Sunshine Law as set forth in Section 610.011, RSMo Supp. 1992. Such section provides in subsection 1:

> 610.011. Liberal construction of law to be public policy.--1. It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.028 shall be liberally construed and their exceptions strictly construed to promote this public policy.
>
> * * *

Adopting a procedure to make a representative aware of a particular meeting is consistent with this policy of openness in government.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

65102

P.O. Box 899
(314) 751-3321

July 26, 1993

OPINION LETTER NO. 137-93

The Honorable Judith K. Moriarty
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of a referendum petition relating to Senate Bill No. 380, 87th General Assembly, First Regular Session. A copy of the referendum petition which you submitted to this office on July 14, 1993, is attached for reference.

We conclude the petition must be rejected as to form for the following reasons:

1. The statutorily-prescribed form set forth in Section 116.030, RSMo 1986, provides for the petition to be notarized; however, the petition form submitted does not contain the necessary lines for such notarization. Section 116.080, RSMo 1986, further provides for each petition circulator to subscribe and swear to the proper affidavit on each page he submits before a notary public commissioned in Missouri.

2. Section 116.050, RSMo 1986, provides that each page of a referendum petition shall be attached to or shall contain a full and correct text of the measure on which the referendum is sought. The petition submitted for our review did not have attached or contain the text of the measure on which the referendum is sought.

For the reasons set forth above, we conclude the petition must be rejected as to form.

The Honorable Judith K. Moriarty

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

CONFLICT OF INTEREST: MISSOURI ETHICS COMMISSION: 1) Pursuant to Section 105.454(5), RSMo Supp. 1992, an elected or appointed official or employee of the state serving in an executive or administrative capacity may not perform any service for consideration, during one year after termination of his office or employment, by which performance he attempts to influence a decision of any agency of the state, except as provided in such section, and 2) not all meetings of boards and commissions in which a record of the proceedings may be kept and maintained as a public record is an "adversary proceeding" as defined in Section 105.450(1), RSMo Supp. 1992.

September 9, 1993

OPINION NO. 140-93

Missouri Ethics Commission
P.O. Box 1254
Jefferson City, MO 65102

Ladies and Gentlemen:

This opinion is in response to your questions which can be summarized as follows:

> 1. Section 105.454(5), RSMo Supp. 1992, prohibits certain former state officials or employees from attempting to influence the decisions of certain state agencies. Does this restriction prohibit a former employee from influencing decisions of all state agencies or just those agencies over which he had supervisory power?
>
> 2. Are all meetings of boards and commissions in which public records are made encompassed within the definition of "adversary proceeding" provided by Section 105.450(1), RSMo Supp. 1992?

Section 105.454(5), RSMo 1986, provided:

> 105.454. Additional prohibited acts by certain elected and appointed public officials and employees, exceptions.--No elected or appointed official or employee of the state or any political subdivision

> thereof, serving in an executive or administrative capacity, shall:
>
> * * *
>
> (5) Perform any service for consideration, during one year after termination of his office or employment, by which performance he attempts to influence a decision of any agency of the state or political subdivision in which he was an officer or employee or over which he had supervisory power, except that this provision shall not be construed to prohibit any person from performing such service and receiving compensation therefor, in any adversary proceeding or in the preparation or filing of any public document;
>
> * * *

In 1991, this subsection was amended by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 262, 86th General Assembly, First Regular Session (hereinafter "Senate Bill No. 262") to provide:

> (5) Perform any service for consideration, during one year after termination of his office or employment, by which performance he attempts to influence a decision of any agency of the state, or a decision of any political subdivision in which he was an officer or employee or over which he had supervisory power, except that this provision shall not be construed to prohibit any person from performing such service and receiving compensation therefor, in any adversary proceeding or in the preparation or filing of any public document [;] or to prohibit an employee of the executive department from being employed by any other department, division or agency of the executive branch of state government. For purposes of this subdivision, within ninety days after assuming office, the governor shall by executive order designate those members of his staff who have supervisory authority over each department, division or agency of state government for purposes of

> application of this subdivision. The executive order shall be amended within ninety days of any change in the supervisory assignments of the governor's staff. The governor shall designate not less than three staff members pursuant to this subdivision;
>
> * * *

The additions to such section by Senate Bill No. 262 are highlighted by underlining.

Your first question raises the issue of whether the phrase "over which he had supervisory power" applies only to "any political subdivision" or also applies to "any agency of the state." The 1991 amendment whereby a comma was added after the word "state" and the words "a decision of any" were added before the words "political subdivision" indicates that the phrase "over which he had supervisory power" applies only to "any political subdivision." A change in a statute is intended to have some effect, and the legislature will not be charged with having done a meaningless act. State v. Swoboda, 658 S.W.2d 24, 26 (Mo. banc 1983). What the legislature intended is to be concluded from the language which it used. Id. The changes described above reflect the apparent legislative intent to apply the phrases "in which he was an officer or employee or over which he had supervisory power" only to "any political subdivision" and make clear that such phrases do not apply to "any agency of the state."

This apparent legislative intent is further supported by the addition of a comma following the word "state." The general rule is that when a conjunction connects two coordinate clauses or phrases, a comma should precede the conjunction if it is intended to prevent following qualifying phrases from modifying the clause which precedes the conjunction. Application of Graham, 199 S.W.2d 68, 74 (Mo. App. 1946); Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824, 829 (Mo. banc 1990). The addition of the comma following the word "state" further indicates the qualifying phrases "in which he was an officer or employee or over which he had supervisory power" are not intended to modify the words "any agency of the state."

However, Senate Bill No. 262 also added to subsection 5: "For purposes of this subdivision, within ninety days after assuming office, the governor shall by executive order designate those members of his staff who have supervisory authority over each department, division or agency of state government for purposes of application of this subdivision. . . ." As stated

previously, a change in a statute is intended to have some effect, and the legislature will not be charged with having done a meaningless act. State v. Swoboda, supra. This addition to subsection 5 indicates the legislature apparently considered the phrase "over which he had supervisory power" as applying to the state or such designation by the Governor would be meaningless. This addition is inconsistent with the addition of the comma after the word "state" and the addition of the words "a decision of any" before the words "political subdivision" as discussed previously.

In resolving the two apparently inconsistent amendments to subsection 5 by Senate Bill No. 262, we conclude the phrase "over which he had supervisory power" only modifies "any political subdivision" and does not modify "any agency of the state." Such conclusion is consistent with the plain meaning of that sentence and reflects the apparent legislative intent of the 1991 amendment to that sentence. To reach a contrary conclusion would require disregarding the 1991 amendment to that sentence. Therefore, an elected or appointed official or employee of the state serving in an executive or administrative capacity may not perform any service for consideration, during one year after termination of his office or employment, by which performance he attempts to influence a decision of any agency of the state, except as provided in Section 105.454(5).

Your second question asks if all meetings of boards and commissions in which public records are made are encompassed within the definition of "adversary proceeding" provided by Section 105.450(1), RSMo Supp. 1992. Section 105.454(5) makes an exception for participation in any adversary proceeding. Section 105.450(1) defines "adversary proceeding" as follows:

> 105.450. Definitions.--As used in sections 105.450 to 105.498 and sections 105.955 to 105.963, unless the context clearly requires otherwise, the following terms mean:
>
> (1) "Adversary proceeding", any proceeding in which a record of the proceedings may be kept and maintained as a public record at the request of either party by a court reporter, notary public or other person authorized to keep such record by law or by any rule or regulation of the agency conducting the hearing; or from which an appeal may be taken directly or indirectly, or any proceeding from the decision of which any party must be granted, on request, a hearing de novo; or

> any arbitration proceeding; or a proceeding of a personnel review board of a political subdivision; or an investigative proceeding initiated by an official, department, division, or agency which pertains to matters which, depending on the conclusion of the investigation, could lead to a judicial or administrative proceeding being initiated against the party by the official, department, division or agency; [Emphasis added.]

Use of the term "either party" in the definition of "adversary proceeding" implies at least two (2) persons who are concerned or who have adverse interests with respect to the outcome of the proceeding. Furthermore, the term being defined is "adversary proceeding" which ordinarily implies a proceeding which has opposing parties. See Black's Law Dictionary, Sixth Edition (1990). All of the other enumerated instances cited in the definition involve situations where one or more parties seeks particular relief and in which another party opposes the particular relief sought. Words and phrases of a statute should be read within the context in which they are used. City of Willow Springs v. Missouri State Librarian, 596 S.W.2d 441, 445 (Mo. banc 1980). Therefore, we conclude that not all meetings of boards and commissions in which a record of the proceedings may be kept and maintained as a public record is an "adversary proceeding" as defined in Section 105.450(1).

CONCLUSION

It is the opinion of this office that 1) pursuant to Section 105.454(5), RSMo Supp. 1992, an elected or appointed official or employee of the state serving in an executive or administrative capacity may not perform any service for consideration, during one year after termination of his office or employment, by which performance he attempts to influence a decision of any agency of the state, except as provided in such section, and 2) not all meetings of boards and commissions in which a record of the proceedings may be kept and maintained as a public record is an "adversary proceeding" as defined in Section 105.450(1), RSMo Supp. 1992.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

July 26, 1993

OPINION LETTER NO. 142-93

The Honorable Judith K. Moriarty
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of Article X of the Missouri Constitution and specifically Sections 1, 4(a), 4(b), 4(c), 4(d), 4(e), 5, 6, 6(b) and 10(a). A copy of the initiative petition and the proposed amendment which you submitted to this office on July 15, 1993, is attached for reference.

We conclude the petition must be rejected as to form. Missouri Constitution, Article III, Section 50 requires an initiative petition proposing a constitutional amendment to include the full text of the measure so proposed. Judicial interpretation of this provision requires that notice be given to the voters of the existing constitutional provisions that may be amended or impliedly repealed if the proposed amendment is adopted. See, e.g., Buchanan v. Kirkpatrick, 615 S.W.2d 6, 14-15 (Mo. banc 1981). The notice reviewed in Buchanan can be found in 615 S.W.2d at 24. The enclosed initiative contains no such notice; however, the proposed amendment is in direct conflict with provisions not listed. As an example, the proposed amendment to Article X, Section 1 is in direct conflict with provisions in Article X, Section 18. Because of the lack of the required notice, we conclude the petition must be rejected as to form.

Because of our rejection of the form of petition for the reason stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

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P.O. Box 899
(314) 751-3321

July 30, 1993

OPINION LETTER NO. 143-93

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall a law be enacted to allow unlimited contributions to a candidate by the candidate, the candidate's immediate family or political party committees; limit all other contributions to candidates; prohibit contributions from political action committees and contributions by one candidate committee to another candidate committee; require excess campaign funds to be given to the Ethics Commission or returned to the contributors; prohibit contributions to legislators during the legislative session; and, provide for enforcement by the Ethics Commission or in circuit court?

See our Opinion Letter No. 129-93.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

The Honorable Judith K. Moriarty

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

August 4, 1993

OPINION LETTER NO. 147-93

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of Chapter 130, RSMo, and specifically the enactment of five new sections to be known as Sections 130.100, 130.110, 130.120, 130.130 and 130.135. A copy of the initiative petition which you submitted to this office on August 2, 1993, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

August 4, 1993

OPINION LETTER NO. 148-93

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall a law be enacted to allow unlimited contributions to a candidate by the candidate, the candidate's immediate family or political party committees; limit all other contributions to candidates; prohibit contributions from political action committees and contributions by one candidate committee to another candidate committee; require excess campaign funds to be given to the Ethics Commission or returned to the contributors; prohibit contributions to legislators during the legislative session; and, provide for enforcement by the Ethics Commission or in circuit court?

See our Opinion Letter No. 147-93.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

The Honorable Judith K. Moriarty

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

MERIT SYSTEM:
MISSOURI ETHICS COMMISSION: Employees of the Missouri Ethics Commission are not included among the employees designated in Section 36.030, RSMo Supp. 1992, as being subject to the merit system.

October 5, 1993

OPINION NO. 150-93

Missouri Ethics Commission
Post Office Box 1254
Jefferson City, MO 65102

Ladies and Gentlemen:

This opinion is in response to your question which can be summarized as follows:

> Do the provisions of Section 36.030, RSMo, identifying those departments subject to the merit system cover the employees of the Missouri Ethics Commission?

Chapter 36, RSMo, sets forth the state personnel law, known as the merit system. The provisions of this chapter regulate the methods by which certain state employees are hired, promoted, disciplined and dismissed.

The merit system is made applicable to certain departments, divisions and agencies by Section 36.030, RSMo Supp. 1992. Section 36.030.1, provides in part:

> 36.030. Personnel, administration of merit system--departments affected--exemptions--employee suggestions, awards authorized.--1. A system of personnel administration based on merit principles and designed to secure efficient administration is established for all offices, positions and employees, except attorneys, of the department of social services, the department of corrections, the department of health, the department of natural resources, the department of mental health, the personnel division and other divisions and units of the office of

> administration, the division of employment security of the department of labor and industrial relations, the division of industrial inspection, the tourism commission, environmental improvement authority, Missouri housing development commission, the Missouri state water patrol, the Missouri veterans commission, such other agencies as may be designated by law, and such other agencies as may be required to maintain personnel standards on a merit basis by federal law or regulations for grant-in-aid programs, ... [Emphasis added.]

Section 105.955.1, RSMo Supp. 1992, states that the Missouri Ethics Commission (hereinafter "the Commission") is assigned to the Office of Administration only for budgeting and reporting purposes. Specifically, this section provides in part:

> 1. A bipartisan "Missouri Ethics Commission", composed of six members, is hereby established. The commission shall be assigned to the office of administration with supervision by the office of administration only for budgeting and reporting as provided by subdivisions (4) and (5) of subsection 6 of section 1 of the Reorganization Act of 1974. . . . [Emphasis added.]

The use of the word "only" in the statute indicates the Commission is subject to supervision by the Office of Administration for budgeting and reporting solely, exclusively and for nothing else or more. See State ex rel. Collins v. Donelson, 557 S.W.2d 707, 710 (Mo. App. 1977). The word "only" is defined as meaning alone in its class, sole, single, exclusive, solely, this and no other, nothing else or more. Id.

Included within the statutory language that defines the powers and duties of the Commission is the following provision in Section 105.955:

> 11. The commission shall appoint an administrative secretary who shall serve subject to the supervision of and the pleasure of the commission, but in no event for more than six years. The

> administrative secretary shall be responsible for the administrative operations of the commission and perform such other duties as may be delegated or assigned to him by law or by rule of the commission. The administrative secretary shall employ staff and retain such contract services as he deems necessary, within the limits authorized by appropriations by the General Assembly. [Emphasis added.]

Subsection 15 of Section 105.950 provides in part:

> 15. In connection with such powers provided by sections 105.955 to 105.963 and chapter 130, RSMo, the commission may:
>
> * * *
>
> (4) Employ such personnel and make use of services provided to the commission by contract, within the limits of its appropriation to the commission, as it deems necessary; and
>
> * * *

Subsection 15 of Section 105.961, RSMo Supp. 1992, provides in relevant part:

> 15. The special investigator and members and staff of the commission shall maintain confidentiality with respect to all matters concerning a complaint until and if a report is filed with the commission, with the exception of communications with any person which are necessary to the investigation. The report filed with the commission resulting from a complaint acted upon under the provisions of this section shall not contain the name of the complainant or other person providing information to the investigator, if so requested in writing by the complainant or such other person. Any person who violates the confidentiality requirements imposed by this section or subsection 17 of section 105.955 requires to be confidential shall be guilty of a

> class A misdemeanor and shall be subject to removal from or termination of employment by the commission. [Emphasis added.]

There is no statutory provision expressly placing the Commission under the auspices of the merit system. (Contrast the foregoing statutes with the provision in subsection 5 of Appendix B (1), RSMo 1986 stating: "All other employees assigned to work for the State Environmental Improvement and Energy Resources Authority or the Missouri Housing Development Commission except the directors of staff, their personal secretaries, and two deputies shall be appointed by the directors of the departments in accord with chapter 36, RSMo, ..." While it is expressly stated that the Commission is assigned to the Office of Administration for budgeting and reporting purposes, there is no other statutory language to suggest that the Commission is assigned to the Office of Administration for any other purpose, including personnel management. Furthermore, there is no language to suggest that the General Assembly intended to make the Commission a "unit" or "division" of the Office of Administration for merit system purposes.

To the contrary, the statutory provisions establishing and outlining the powers and duties of the Commission indicate legislative intent to provide the Commission autonomy and independence in selecting, retaining, disciplining and terminating its own personnel. See Section 105.955.11 ("employ staff"), Section 105.955.15(4) ("[e]mploy such personnel"), and Section 105.961.15 ("termination of employment by the commission"). Therefore, we conclude that employees of the Missouri Ethics Commission are not included among the employees designated in Section 36.030 as being subject to the merit system.

CONCLUSION

It is the opinion of this office that employees of the Missouri Ethics Commission are not included among the employees designated in Section 36.030, RSMo Supp. 1992, as being subject to the merit system.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

CITIES, TOWNS AND VILLAGES:
FOURTH CLASS CITIES:
IMPEACHMENT:

The phrase "all the members elected to the board of aldermen" in Section 79.240, RSMo 1986, refers to the full authorized membership of the board so, if the board of aldermen consists of four members, the mayor may remove an alderman pursuant to such section only with the consent of three aldermen.

October 8, 1993

OPINION NO. 151-93

The Honorable Wayne Goode
Senator, District 13
State Capitol Building, Room 334
Jefferson City, Missouri 65101

Dear Senator Goode:

This opinion is in response to your question asking:

> Whether an Alderman in a Fourth Class City who is the subject of an impeachment proceeding pursuant to RSMo 79.240, should vote as a member of the Board of Impeachment and if he should not vote, then should his seat count for the purposes of determining what constitutes a majority when said Alderman is inherently biased and the Board of Impeachment is judicial in nature?

The information you included with your opinion request states: "The Board of Alderman consists of four Aldermen. If said Alderman's seat does count, then the Board of Impeachment can only give its consent to the Mayor, if there is unanimous approval from the participating board members. If said Alderman's seat does not count, then the Board of Impeachment can provide its consent by providing majority approval from participating members. . . ."

Section 79.240, RSMo 1986, to which your question refers, provides:

> 79.240. Removal of officers.--The mayor may, with the consent of a majority of all the members elected to the board of

> aldermen, remove from office, for cause shown, any elective officer of the city, such officer being first given opportunity, together with his witnesses, to be heard before the board of aldermen sitting as a board of impeachment. Any elective officer, including the mayor, may in like manner, for cause shown, be removed from office by a two-thirds vote of all members elected to the board of aldermen, independently of the mayor's approval or recommendation. The mayor may, with the consent of a majority of all the members elected to the board of aldermen, remove from office any appointive officer of the city at will, and any such appointive officer may be so removed by a two-thirds vote of all the members elected to the board of aldermen, independently of the mayor's approval or recommendation. The board of aldermen may pass ordinances regulating the manner of impeachments and removals. [Emphasis added.]

State ex rel. Brown v. City of O'Fallon, 728 S.W.2d 595 (Mo. App. 1987) considered the number of votes needed to act pursuant to Section 79.240. In discussing this issue, the court stated:

> O'Fallon is a fourth class city organized under Chapter 79 of the Revised Statutes of Missouri. Its Board of Aldermen consists of eight members, all who voted at the hearing. RSMo 79.240 (1978) allows the removal of the mayor "by a two-thirds vote of all members elected to the board of alderman." As there are eight members elected, this would require six yes votes. Had the board disqualified either Davis or Griesenauer or both, it still would have been fundamentally capable of impeachment because the possibility of a six to zero vote remained. If we assume that Davis and Griesenauer had been disqualified and that Brown's lone supporter would have still voted against impeachment, thereby preventing the obtaining of six votes, that would not change our holding. That the result would

> have been different is not be sufficient to invoke the Rule of Necessity.
>
> It is argued, that even with disqualification a five to one vote for impeachment still meets the statutory requirements and the failure to remove Davis and Griesenauer was harmless error. This is incorrect for two reasons. First, similar legislation requiring a "two-thirds vote" of all the members has been held to include the votes non-participating members. Braddy v. Zych, 702 S.W.2d 491, 493-494 (Mo. App. 1985). . . .

State ex rel. Brown v. City of O'Fallon, 728 S.W.2d at 797-798. Based on the discussion in this case, the reference in Section 79.240 to "all the members elected to the board of aldermen" refers to the four members of the board of aldermen in the situation about which you are concerned. See also Fitzgerald v. City of Maryland Heights, 796 S.W.2d 52, 60 (Mo. App. 1990).

In Missouri Attorney General Opinion No. 172-91, a copy of which is enclosed, this office considered the meaning in Sections 80.070 and 80.110, RSMo 1986, of the phrases a "majority of the trustees" and a "majority of all the members of the board of trustees." Relying on Braddy v. Zych, 702 S.W.2d 491 (Mo. App. 1985), this office stated:

> Sections 80.070 and 80.110, RSMo 1986, refer to a "majority of the trustees" and a "majority of all the members of the board of trustees." In Braddy v. Zych, 702 S.W.2d 491 (Mo. App. 1985) the court considered the meaning of the phrase "all the members" and whether such phrase referred to the full authorized membership of a board or the actual membership of the board at the time the vote is taken. The court reviewed cases from other states and concluded the better view is that "all the members" refers to the full authorized membership. Following the view in Braddy v. Zych, supra, we conclude that the references to a "majority of the trustees" and a "majority of all the members of the board of trustees" in Sections 80.070 and

80.110, RSMo 1986, refer to a majority of the full authorized membership of the board.

Section 79.240, which is the subject of your question, refers to "all the members elected to the board of aldermen." Based on the cases cited previously and our prior opinion in response to a similar question, we conclude that the phrase about which you are concerned refers to the full authorized membership of the board. You have stated that the full authorized membership of the board about which you are concerned is four. Therefore, the mayor may remove an alderman pursuant to Section 79.240 only with consent of a majority of the four aldermen which is three aldermen.

Having concluded that "all the members elected to the board of aldermen" refers to the full authorized membership of the board, it is not necessary to address the remaining aspects of your question. Regardless of the bias of the alderman subject to impeachment, a majority of the four alderman comprising the full board is needed rather than a majority of the remaining three.

CONCLUSION

It is the opinion of this office that the phrase "all the members elected to the board of aldermen" in Section 79.240, RSMo 1986, refers to the full authorized membership of the board so, if the board of aldermen consists of four members, the mayor may remove an alderman pursuant to such section only with the consent of three aldermen.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure: Opinion No. 172-91

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

August 18, 1993

OPINION LETTER NO. 153-93

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. We presume the statement relates to the initiative petition whose form this office approved in Opinion Letter No. 147-93. The statement which you have submitted is as follows:

> Shall a law be enacted to limit contributions to candidates for public office (except there shall be no limits placed on contributions to a candidate by the candidate, the candidate's immediate family or political party committees); prohibit contributions from continuing committees and contributions by one candidate committee to another candidate committee; prohibit contributions to any member of the General Assembly during the legislative session; require excess campaign funds to be given to the Ethics Commission or returned to the contributors; and provide for enforcement by the Ethics Commission or in a circuit court?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

The Honorable Judith K. Moriarty

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JAY NIXON
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

August 20, 1993

OPINION LETTER NO. 155-93

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of various sections in Article X of the Missouri Constitution. A copy of the initiative petition and the proposed amendment which you submitted to this office on August 10, 1993, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

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JEREMIAH W. (JAY) NIXON
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P.O. Box 899
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October 27, 1993

OPINION LETTER NO. 158-93

Missouri Ethics Commission
P.O. Box 1254
Jefferson City, Missouri 65102

Ladies and Gentlemen:

This opinion letter is in response to your question which can be summarized as follows:

> Can a member of the Missouri General Assembly serve as a federal bankruptcy trustee without violating any state statute or constitutional provision?

Pursuant to 28 U.S.C.A. § 586, each United States trustee establishes, maintains and supervises a panel of private trustees that are eligible and available to serve as trustees in bankruptcy cases. The information provided in your opinion request indicates that the issue for consideration is whether a member of the Missouri General Assembly may be a member of such a panel of private trustees and be appointed as trustee in a bankruptcy case. Such a trustee receives compensation for his services.

Article III, Section 12, of the Missouri Constitution provides:

> **Section 12. Members of general assembly disqualified from holding other offices.** No person holding any lucrative office or employment under the United States, this state or any municipality thereof shall hold the office of senator or representative. When any senator or representative accepts any office or employment under the United States, this state or any municipality thereof, his

> office shall thereby be vacated and he shall thereafter perform no duty and receive no salary as senator or representative. During the term for which he was elected no senator or representative shall accept any appointive office or employment under this state which is created or the emoluments of which are increased during such term. This section shall not apply to members of the organized militia, of the reserve corps and of school boards, and notaries public. [Emphasis added.]

Under this section, if the person is holding "employment under the United States," such person is prohibited from holding the office of senator or representative.

This office has broadly interpreted the term "employment" as that term is used in Article III, Section 12. For example, in Opinion Letter No. 355, Salveter, 1969, a copy of which is enclosed, this office stated:

> The term "employment" is subject to a variety of legal interpretations depending upon the context in which it arises. Since the purpose of Article III, Section 12 appears to be to prevent the potential conflicts of interest which would arise if a senator or representative were to have other duties with respect to other governmental bodies, we are of the opinion that a broad interpretation of the word "employment" is called for when construing that section.

Id. at page 2. Such opinion concluded that Article III, Section 12, prohibited a legislator from serving as an attorney for a state college. See also Opinion No. 13-87, a copy of which is enclosed, interpreting the term "employment" as used in Article III, Section 12.

In Opinion Letter No. 44-90, a copy of which is enclosed, this office opined that a member of the General Assembly accepting a court appointment to represent an indigent criminal defendant for compensation would come within the prohibition of Article III, Section 12. See also Opinion No. 34, Bradshaw, 1973, a copy of which is enclosed, reaching a similar conclusion. Such bankruptcy trustee appointments are similar to

attorney appointments in indigent criminal defendant situations in that the appointments are on a case-by-case basis and the appointees receive compensation.

Furthermore, such bankruptcy trustees are not outside the scope of "employment under the United States" simply because their compensation is derived from bankruptcy filing fees and, in some instances, from the distribution of assets (11 U.S.C.A. § 326 and 11 U.S.C.A. § 330). "Under the United States" has a broader scope and application than "of the United States." See the discussion of "under" in Willis v. Potts, 377 S.W.2d 622 (Texas 1964) and Orndorff v. State ex rel. McGill, 108 S.W.2d 206 (Tex.App. 1937).

In summary, serving as a bankruptcy trustee is "employment under the United States." "Employment" is broadly defined for purposes of Article III, Section 12, and such position is "under the United States." Therefore, we conclude a member of the Missouri General Assembly who is appointed as trustee in a bankruptcy case would be within the prohibition of Article III, Section 12, of the Missouri Constitution.[1]

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure: Opinion Letter No. 355, Salveter, 1969
Opinion No. 13-87
Opinion Letter No. 44-90
Opinion No. 34, Bradshaw, 1973

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[1]Having concluded that serving as a bankruptcy trustee constitutes "employment under the United States," it is not necessary to address whether such person holds an "office." However, bankruptcy trustees are commonly referred to as officers of the federal courts to which they serve. See, for example, In Re Coastal Equities, Inc., 39 B.R. 304 (Bkrtcy. 1984).

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P.O. Box 899
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August 20, 1993

OPINION LETTER NO. 159-93

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to amendment of the Missouri Constitution by adding a new article prohibiting special privilege laws based on sexual orientation. A copy of the initiative petition which you submitted to this office on August 11, 1993, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
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September 3, 1993

OPINION LETTER NO. 162-93

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall the Constitution of Missouri be amended by adding a new Article which would prohibit the state of Missouri, through any of its branches, departments or agencies, and its political subdivisions, including counties, municipalities and school districts, from enacting, adopting or enforcing any statute, order, regulation, rule, ordinance, resolution or policy whereby homosexual, lesbian or bi-sexual activity, conduct or orientation shall entitle any person or class of persons to have or demand any minority status, protected status, quota preference, affirmative action or claim of discrimination?

See our Opinion Letter No. 159-93.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

The Honorable Judith K. Moriarty

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

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ATTORNEY GENERAL

P.O. Box 899
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September 3, 1993

OPINION LETTER NO. 163-93

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall Article X of the Constitution of Missouri be amended to require a public vote on all tax increases; require public vote before 1996 on all existing excise taxes; abolish income taxes by state, its subdivisions and other political subdivisions on income earned after January 1, 1995; impose additional sales tax for public schools; impose additional sales tax for county, city and municipal government; exempt from taxation real and personal property; and require refunds under Article X section 18(a) of the Constitution be directly to public school districts?

See our Opinion Letter No. 155-93.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

The Honorable Judith K. Moriarty

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

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P.O. Box 899
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November 5, 1993

OPINION LETTER NO. 179-93

The Honorable Judith K. Moriarty
Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition entitled Philadelphia II. A copy of the proposed law which you submitted to this office on October 28, 1993, is attached for reference.

We conclude the petition must be rejected as to form. Section 116.040, RSMo 1986, sets forth the form of an initiative petition proposing any law or amendment to the Missouri Constitution. Of the pages which you submitted to this office for review, there is no page complying with the form set forth in Section 116.040. Because of the failure to comply with Section 116.040, we conclude the petition must be rejected as to form.

Because of our rejection of the form of the petition for the reason stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

JWN:pbj

Attachment

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

November 12, 1993

OPINION LETTER NO. 184-93

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of Article X of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on November 5, 1993, is attached for reference.

We approve the petition as to form.[1] However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an

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[1]The initiative petition contains a purported "title." Section 116.334 provides for the Secretary of State to prepare the statement of purpose which, unless altered by a court, is the petition title. Our approval of the petition as to form should not be deemed approval of the petition "title." We will consider the proposed statement of purpose prepared by your office upon its submission to us as provided by Section 116.334.

endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
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December 14, 1993

OPINION LETTER NO. 192-93

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Moriarty:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall Article X of the Constitution of Missouri be amended to limit the increase of total state revenues generated by new, increased, or broadened taxes, licenses and fees, including user fees, to twenty-five hundredths of one percent of the total state revenue during the prior fiscal year, unless approved by popular vote; make all increases in taxes, licenses, and fees, including user fees, by any political subdivision subject to voter approval; and prohibit the state from mandating tax increases on political subdivisions as a requirement for maintaining their corporate status or existing level of state funding?

See our Opinion Letter No. 184-93.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

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P.O. Box 899
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December 27, 1993

OPINION LETTER NO. 194-93

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of Article X of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on December 17, 1993, is attached for reference.

We approve the petition as to form.[1] However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

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[1]The initiative petition contains a purported "title." Section 116.334 provides for the Secretary of State to prepare the statement of purpose which, unless altered by a court, is the petition title. Our approval of the petition as to form should not be deemed approval of the petition "title." We will consider the proposed statement of purpose prepared by your office upon its submission to us as provided by Section 116.334.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

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P.O. Box 899
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December 29, 1993

OPINION LETTER NO. 201-93

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition entitled Philadelphia II. A copy of the initiative petition and the proposed law which you submitted to this office on December 27, 1993, is attached for reference.

We approve the petition as to form.[1] However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view

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[1]The initiative petition contains a purported title. Section 116.334 provides for the Secretary of State to prepare the statement of purpose which, unless altered by a court, is the petition title. Our approval of the petition as to form should not be deemed approval of the petition title. We will consider the proposed statement of purpose prepared by your office upon its submission to us as provided by Section 116.334.

respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure